



The Town of Hilton Head Island

Special Town Council Meeting

Thursday, October 4, 2012

4:30 P.M.

“REVISED” AGENDA

**As a Courtesy to Others Please Turn Off All Mobile Devices During
the Town Council Meeting**

- 1) Call to Order**
- 2) FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
- 3) New Business**

a. First Reading of Proposed Ordinance 2012-23

First Reading of Proposed Ordinance 2012-23 of the Town Council of the Town of Hilton Head Island, South Carolina, authorizing the execution of a development agreement with Shelter Cove Towne Centre, LLC for the redevelopment of the Mall at Shelter Cove pursuant to the authority of S.C. Code Ann. Sec. 5-7-40 (Supp. 2011), and Sec. 2-7-20, Code of the Town of Hilton Head Island, South Carolina, (1983); and providing for severability and an effective date.

b. First Reading of Proposed Ordinance 2012-24

First Reading of Proposed Ordinance 2012-24 authorizing the sale of real property owned by the Town of Hilton Head Island, South Carolina, in exchange for land owned by Shelter Cove Towne Centre, LLC in conjunction with the Mall at Shelter Cove Development Agreement and pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, As Amended); and providing for severability and an effective date.

c. First Reading of Proposed Ordinance 2012-28

First Reading of Proposed Ordinance 2012-28 authorizing the establishing of covenants and restrictions on real property in conjunction with the Mall at Shelter Cove Development Agreement and pursuant to the authority of S. C. Code Ann. § 5-7-40 (supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, As Amended); and providing for severability and an effective date.

d. First Reading of Proposed Ordinance 2012-29

First Reading of Proposed Ordinance 2012-29 authorizing the extinguishment of covenants and restrictions on real property in conjunction with the Mall at Shelter Cove Development Agreement and pursuant to the authority of S. C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island, South Carolina*, (1983, As Amended); and providing for severability and an effective date.

e. First Reading of Proposed Ordinance 2012-19

First Reading of Proposed Ordinance 2012-19 to amend Title 16, "The Land Management Ordinance," of the *Municipal Code of the Town of Hilton Head Island, South Carolina*, by amending Section 16-4-102, the Official Zoning Map and the Palmetto Dunes Resort Master Plan with respect to the certain parcels identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 acre portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan under the PD-1 Planned Development Mixed Use District, to amend the uses and associated density for Parcel 26, Tax Map #12B to 295,000 square feet of commercial uses, excluding uses listed in LMO 16-4-209, but permitting liquor store and gas sales, community park and 76 multi-family dwelling units; and the portion of Parcel 12, Tax Map #12C to 134 multi-family dwelling units and community park; and providing for severability and an effective date.

f. Consideration of a Resolution

Consideration of a Resolution to amend Resolution No. 2012-14 relating to the declaration of intent by the Town Council of the Town of Hilton Head Island, South Carolina, to reimburse certain expenditures prior to the issuance by the Town of its tax-exempt debt.

g. First Reading of Proposed Ordinance 2012-34

First Reading of Proposed Ordinance 2012-34 to amend the budget for the Town of Hilton Head Island, South Carolina, for the Fiscal Year ending June 30, 2013; to provide for the expenditures of certain funds; and to allocate the sources of revenue for the said funds.

h. Discussion of Town Council Compensation

13) Executive Session

a. Land Acquisition

b. Legal Matters

- 1) Development Agreement with Shelter Cove Towne Centre, LLC

14) Adjournment



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather L. Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: September 26, 2012
SUBJECT: Proposed Ordinance No. 2012-23 – First Reading
Proposed Development Agreement for the Mall at Shelter Cove

The proposed development agreement as attached has been revised since it was last included in the August 7, 2012 meeting packets.

The changes have been summarized on the attached letter.

ALFORD, WILKINS & COLTRANE, LLC

Attorneys at Law

18 Executive Park Road, Building 1

P.O. Drawer 8008

Hilton Head Island, SC 29938-8008

Telephone (843) 842-5500

Facsimile (843) 842-8400

www.awc-lawfirm.com

GREGORY M. ALFORD

EMAIL: GREGG@AWC-LAWFIRM.COM

(NOT FOR CONFIDENTIAL COMMUNICATIONS)

GREGORY M. ALFORD*

JOHN W. WILKINS

CURTIS L. COLTRANE†

MITCHELL J. THORESON

SCOTT M. WILD

THOMAS E. WILLIAMS†

*Also member Georgia Bar

**Also member Virginia Bar

† Of Counsel

September 26, 2012

Via Hand Delivery

Stephen G. Riley, ICMA-CM

Town of Hilton Head Island, South Carolina

One Town Center Court

Hilton Head Island, SC 29928

Re: Shelter Cove Mall Development

Dear Steve:

Please allow this letter to serve as an update regarding matters associated with the development of the Shelter Cove Mall area on Hilton Head Island. As you and Council are aware, negotiations are continuing with the Developer, Shelter Cove Towne Centre, LLC, and the Development Agreement is being finalized. Enclosed you will find a current proposed draft of the Development Agreement for your review. You will note that there have been a few changes since your last review of the Agreement, and this letter briefly discusses those changes.

First, Paragraph 5 of the fourth Whereas clause has been clarified to establish a maximum of eight (8) fuel pumps in the proposed development per Council's request. In addition, Section I has added two Ordinances under G and H, which involve removing and adding certain covenants and restrictions on property within the development.

Second, you will note that the expected number of multi-family dwelling units as detailed in Section IV(C) of the Agreement, as well as in the Concept Plan, has been removed. This was done by the Developer in an effort to avoid pigeon-holing itself into an exact number of units, and our office and Town staff do not have much concern over this removal.

Section V(D) has been substantially revised, and in effect has been completely rewritten. This was done in an effort to clean up the exchange/transfer of the Property within the proposed development in order to avoid the need to adhere to the Town's Procurement Code. In section V(D)(i), there will now be a "Park Design Plan" which will be implemented to streamline the design and construction process of the Community Park. This Park Design Plan will incorporate the terms of the Park Improvement Plan, including design and construction standards as well as all necessary documents to construct the Park. Section V(D)(ii) sets forth the development of a Budget or cost estimate, which the Town and SCTC will agree upon prior to the commencement of any construction on the Community Park. As you will note, the Agreement states that the parties will use best efforts to agree on a cost for the Community Park not to exceed \$4.5 Million.

Section V(D)(iii) places responsibility on design and construction on the Developer, and further includes a payment and performance bond requirement on the Developer in connection with the Community Park, in order to more fully protect the interests of the Town. Section V(D)(iv) gives a blanket requirement on the Developer to provide the Town with all correspondence, notices, etc. associated with the design and construction of the Park, and further gives the Town the power to approve all change orders for work pursuant to the Community Park. In addition, the section provides that the Town and the Developer will meet at least once every two (2) weeks and at other significant events to address any issues or problems involved in the construction of the Park. Section V(D)(v) states that the Developer will submit certifications to the Town upon completion of all Park improvements, which certifications will be provided by building professionals or certified engineers that the Park has been completed in accordance with the Park Design Plan.

Section V(D)(vi) explains that the Town must notify the Developer within thirty (30) days of any certification(s) as to any discrepancies with the work performed, and the Developer agrees to take action to correct any discrepancies. Section V(D)(vii) sets forth the closing date, which is thirty (30) days after all certifications are accepted and/or the Park is completed. Section V(D)(viii) details the purchase price of the Community Park, and explains that the purchase price will be one-half of the total construction costs of the Park, which consists of all costs in connection with the design and construction of the Park, plus the transfer of the Exchange Parcel to the Developer. Note that this purchase price will contemplate any proposed pier or dock as well. Note also that this purchase price will largely be solidified during the design process when a budget or cost estimate is agreed upon between the Town and Developer.

Section V(D)(ix) simply states that the Town is responsible for obtaining all permits for improvements to the Community Park required by OCRM or any other regulatory agency for areas of the Park within the Critical Area. Finally, Section V(D)(x) sets forth the establishment of Park Management Plan and its details.

Section V(G) has been clarified to state that the Developer is responsible for the total cost of the restrooms and storage area(s) within the development. Section VI(M) of the Agreement has been expanded to include more detail in local vendor preference.

Finally, Section VI has an added provision, P, which covers modifications to the Concept Plan. It has become apparent that the Concept Plan has the potential to be modified, whether minimally or otherwise, throughout the remainder of this process.¹ As such, we felt it necessary to include a provision in the Agreement allowing for modifications to the Concept Plan in order to more fully meet the intent and effect of the Development Agreement. As such, Section VI(P) covers modifications to the Concept Plan. In general, this section states that there are two types of modifications, major and minor. Major modifications require the approval of Town Council and must meet any necessary requirements under the LMO, such as re-zoning approval, etc., and are explicitly listed. All other modifications to the Concept Plan are deemed minor modifications and simply require the approval of the LMO Administrator. We feel this is the best way to defer to Council with regards to substantial modifications, and to handle more minor modifications at the staff level.

Should you have any further questions, comments or concerns, please do not hesitate to contact me. I am,

Very truly yours,
ALFORD, WILKINS & COLTRANE, LLC

Gregory M. Alford

Enclosures

cc: Hon. Drew A. Laughlin
Kenneth S. Heitzke
Bill Ferguson
George Williams, Jr.
Bill Harkins
Kimberly W. Likins
Lee Edwards

¹ A recently-revised version of the Concept Plan is enclosed with this letter.

PROPOSED ORDINANCE NUMBER: 2012-23

ORDINANCE NUMBER:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH SHELTER COVE TOWNE CENTRE, LLC FOR THE REDEVELOPMENT OF THE MALL AT SHELTER COVE PURSUANT TO THE AUTHORITY OF S.C. CODE ANN. SEC. 5-7-40 (SUPP. 2011), AND SEC. 2-7-20, CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, (1983); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Shelter Cove Towne Centre, LLC (“SCTC”) is the owner of those certain parcels of land containing 42.45 acres, more or less, (prior to the Land Swap hereinafter described) located within the Town of Hilton Head Island (“Mall Tract”), which is the site of a commercial shopping center mall commonly known as The Mall at Shelter Cove (“Shopping Center”); and

WHEREAS, SCTC proposes to engage in redevelopment of the Mall Tract in order to reconfigure the footprint to open up and highlight Broad Creek, reduce the square footage of commercial density, create a Community Park to be conveyed to the Town, and allow future development on certain outparcels; and

WHEREAS, the State of South Carolina has enacted the South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976), as amended (the “Act”); and

WHEREAS, the Act authorizes local governments, including the city council of a municipality, to enter into development agreements with developers to accomplish the goals as set forth in the Act; and

WHEREAS, the Development Agreement between SCTC and the Town, a copy of which is attached hereto as Exhibit “A”, would, pursuant to and under the terms of the

Act, provide assurances to SCTC that it may proceed with its proposed development, and memorialize certain agreements between the Town and SCTC with respect to the Mall Tract and its development; and

WHEREAS, the Town Council for the Town of Hilton Head Island, South Carolina, has determined that it is in the best interests of the Town to execute the Development Agreement, or one substantially similar in form and substance to that, a copy of which is attached hereto as Exhibit “A”.

NOW THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Development Agreement

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver the Development Agreement which is attached hereto as Exhibit “A”; and
- (b) The Mayor and Town Manager are hereby authorized to take such other and further actions as may be necessary to complete the execution of the Agreement as authorized hereby.

Section 2. Severability.

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date.

This Ordinance shall become effective upon adoption thereof by the Town Council for the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____ DAY OF _____, 2012.

By: _____
Drew Laughlin, Mayor

ATTEST

Vicki Pfannenschmidt, Acting Town Clerk

First Reading: _____

Second Reading: _____

Approved as to Form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

STATE OF SOUTH CAROLINA)
) DEVELOPMENT AGREEMENT
COUNTY OF BEAUFORT) FOR SHELTER COVE MALL

This Development Agreement is entered into by and between Shelter Cove Towne Centre, LLC ("SCTC"), a South Carolina limited liability company, and the Town of Hilton Head Island, South Carolina ("Town"), and shall be effective on the Effective Date, as defined herein.

WHEREAS, the State of South Carolina has enacted the South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976), as amended; and

WHEREAS, the Act authorizes local governments, including the city or town council of a municipality, to enter into development agreements with developers to accomplish the goals as set forth in the Act, consistent with that city or town's Comprehensive Plan; and

WHEREAS, SCTC is the owner of those certain parcels of land containing approximately 42.45 acres (prior to the Land Swap as hereinafter described), more or less, located within the Town of Hilton Head Island, more fully described in the ALTA/ACSM Land Title Survey of Shelter Cove Mall, a Section of Shelter Cove, prepared by Surveying Consultants dated the 27th day of July, 2011, hereinafter referred to as the ALTA Survey and hereafter identified as Exhibit "A" which is the current site and configuration of a commercial shopping center commonly known as The Mall at Shelter Cove (hereinafter "Mall Tract"); and

WHEREAS, SCTC proposes to redevelop the Mall Tract shown on the ALTA Survey in accordance with the Zoning Map Amendment Application submitted to the Town on April 20, 2012, with a reconfigured footprint as shown on the Concept Plan attached as Exhibit "B" (hereinafter "Concept Plan") which will:

1. Open up and highlight the expanse of Broad Creek;
2. Reduce the Gross Floor Area of commercial density from the currently zoned 314,000 square feet to 295,000 square feet which will include:
 3. Up to 10 kiosks (not to exceed a total of 1,500 square feet);

4. Adding a component of 210 multi-family dwelling units and related recreation and club facilities; and
5. Adding gas sales which will include not more than 200 square feet of incidental merchandise and cigarettes in accordance with LMO Section 16-4-209(E)(6) and a maximum of eight (8) fuel pumps;
6. Liquor store in accordance with LMO Section 16-4-209(E)(8); and
7. A Community Park.
8. Provide the Town with an approximately 5.11 acre community park (“Community Park”) bordering on Broad Creek connecting with and becoming an integral part of the Town’s proposed Chaplin Park Linear Trail, which will provide a location and venue for various purposes, including but not limited to walking, entertainment and educational activities, picnicking, and non-organized sports activities; and
9. Allow development on Outparcels I and C, all as more fully shown on the Concept Plan; and

WHEREAS, this Agreement is entered into by and between SCTC and the Town pursuant to, and in accordance with, the terms of the Act for the purpose of providing assurances to SCTC that it may proceed with its proposed development, and for the further purpose of memorializing certain agreements between the Town and SCTC with respect to the Mall Tract and its redevelopment.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and of other good and valuable consideration, including economic and other benefits inuring to both the Town and SCTC as a result of this Agreement with regard to the future development and modification of Shelter Cove Mall by SCTC, the receipt and sufficiency of such consideration being hereby mutually acknowledged, and intending to be legally bound, the Town and SCTC hereby agree as follows:

I. RECITALS.

This Agreement is predicated upon the following:

- A. The Code of Laws of South Carolina (the “SC Code”) Section 6-31-10 through 6-31-160 as it exists on the Effective Date of this Agreement (the

“Act”) enabling municipalities to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the agreement.

- B. Resolution Number 2012-13 adopted by the Town on the 1st day of May, 2012, authorizing SCTC to apply for a rezoning of Town-owned land for the Exchange Parcel. A copy of the Resolution is attached hereto as Exhibit “C”.
- C. Public hearings regarding the consideration of this Agreement conducted by the Town on the 7th day of August, 2012, and the 16th day of October, 2012, after publishing and announcing notice in accordance with the Act.
- D. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, (a) determining that this Agreement is consistent with the Town’s Comprehensive Plan and the Act; and (b) approving this Agreement.
- E. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving and allowing for the Town to execute a deed transferring ownership of the Exchange Parcel as further defined herein to SCTC in return for the acceptance of the Community Park as further defined herein.
- F. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving the re-zoning of the Mall Tract, pursuant to ZMA 120006.
- G. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving the dissolution of the Restrictions referred to in Paragraph V.(C) hereafter.
- H. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, authorizing the Covenants provided of in Paragraph VI.(N) hereafter.

II. INCORPORATION.

The above recitals are hereby incorporated into this Agreement, together with the findings of the South Carolina General Assembly as set forth in Section 6-31-10(B) of the Act, and the definitions as set forth in Section 6-31-20 of the Act.

III. DEFINITIONS.

Capitalized terms used in this Agreement shall have the following definitions:

- A. Act: The South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976) as amended.
- B. Administrator: The person designated as the “LMO Administrator” or “LMO Official” under the applicable provisions of the LMO.
- C. Agreement: This Development Agreement.
- D. ALTA Survey: That certain ALTA/ACSM Land Title survey of Shelter Cove Mall, a section of Shelter Cove, prepared by Surveying Consultants, dated the 27th day of July, 2011 and identified as Exhibit “A” attached hereto.
- E. Certificate of Compliance: A Certificate of Compliance issued by the Administrator pursuant to Chapter 3, Article VII of the LMO.
- F. Commercial: Those Commercial uses as more fully described in LMO Sections 16-4-209 and 16-4-217.
- G. Community Park: That certain approximately 5.11 (including the .14 acre gore resulting from the reconfiguration of Shelter Cove Lane) acre parcel of land fronting on Broad Creek originally being part of the Mall Tract being exchanged to the Town as shown on the Concept Plan.
- H. Comprehensive Plan: The Comprehensive Plan for the Town of Hilton Head Island dated May 4, 2010, as amended, including other adopted supplements, referred to in LMO Chapter 1, Article II.
- I. Concept Plan: That certain Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood

& Partners, LLC, and any other exhibits attached hereto and marked Exhibit "B".

- J. Developer: Shelter Cove Towne Center, LLC, a South Carolina limited liability company referred to herein from time to time as SCTC, its successors or assigns.
- K. Easement: An interest in land of another that entitles the holder to a specified limited use.
- L. Effective Date: The later of (i) the date of final approval and enactment of an ordinance approving the Rezoning Application by the Town Council of the Town, and (ii) the date of final approval and enactment of an ordinance approving this Agreement by the Town Council of the Town.
- M. Exchange Parcel: An approximately 4.9 acre parcel owned by the Town fronting Broad Creek and lying to the northeast of the Mall Tract to be exchanged to the Developer for the Community Park as more fully shown on that certain plat entitled "Boundary Reconfiguration of 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants dated the 12th day of June, 2012, and attached hereto as Exhibit "G".
- N. Gross Floor Area: The area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky and the public restrooms and 1,000 square foot storage area serving the Community Park, to be provided by SCTC.
- O. Impact Fees: Fees paid, either to the Town ("Town Impact Fees") or to Beaufort County, South Carolina ("County Impact Fees") by SCTC in connection with new development and intended to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged. The Town

Impact Fees are more fully described in LMO Chapter 5, Article XVIII. Except as otherwise provided for in the LMO, Impact Fees are in addition to any other requirements, taxes, fees, or assessments imposed by the Town or County on new development or on the issuance of building permits or certificates of occupancy, or which are imposed on and due against property within the jurisdiction of the Town or County.

- P. Land Development Regulations: Ordinance Number _____, attached hereto as Exhibit “D”, of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled “An Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to

134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date”, and (except as otherwise provided herein) (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Shelter Cove Harbour Company, Inc., a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended.

- Q. LMO: The Land Management Ordinance of the Town, Title 16 of the Municipal Code of the Town attached hereto as Exhibit “D”.
- R. Mall Facility/Facilities: The Mall at Shelter Cove.
- S. Mall Tract: Those certain parcels of land originally containing approximately 41.85 acres, as shown on Exhibit “F”, located within the Town of Hilton Head Island, which includes the Exchange Parcel containing 4.90 acres and the revised Multi-Family Parcel containing 4.62 acres as shown on Exhibit “F”.
- T. Owner: SCTC, its successors or assigns.
- U. Palmetto Dunes Resort Master Plan (including Shelter Cove): That certain Master Plan for Palmetto Dunes Resort dated February 10, 1984, last revised on April 22, 1986, and stamped as approved by the Town on May 7, 1986, and the accompanying text, as amended.
- V. Parking Agreement: That certain Parking License Agreement dated November 8, 2001 by and between the Town and PVI Shelter Cove Limited Partnership, its successors and assigns.

- W. Park Improvement Plan: That certain Plan to be entered into between the Town and SCTC within sixty (60) days following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both the Town and SCTC) which will identify the elements and improvements to be placed on the Community Park.
- X. Park Management Plan. That certain Plan to be entered into between the Town and SCTC within six (6) months following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both the Town and SCTC) which shall provide, among other things, a process to avoid use conflicts of the Community Park between SCTC and the Town as hereinafter described.
- Y. Project. The redevelopment that will occur within and upon the Mall at Shelter Cove Tract, including the Exchange Parcel, as exemplified in the Concept Plan.
- Z. Rezoning Application: That certain Zoning Map Amendment Application filed with the Town by SCTC on April 20, 2012 to amend the Master Plan.
- AA. Shelter Cove Towne Centre, LLC: A South Carolina limited liability company, which owns the Mall at Shelter Cove.
- BB. Shopping Center: That certain shopping center commonly known as The Mall at Shelter Cove, located on the Mall Tract.
- CC. Third-Party Developer: A developer developing portions of the Project that are not the Developer.
- DD. Town: The Town of Hilton Head Island, South Carolina.
- EE. Zoning Map Amendment. The proposed Amendment to the current zoning designation of the Mall Tract, also referred to herein as “ZMA” or “ZMA120006”.

IV. DEVELOPMENT RIGHTS.

A. Density and Permitted Uses. Subject to approval by the Town of ZMA120006, the Town agrees that permitted commercial density for the Mall Tract shall be measured in terms of Gross Floor Area of Mall Facilities totaling 295,000 square feet, of which no more than 1,500 square feet can be used for up to ten (10) kiosks; 210 multi-family residential units; an approximately 5.11 acre Community Park (to be owned by the Town pursuant to a land swap as hereinafter described); and additional uses on the Property of gas sales, which may include not more than 200 square feet of incidental merchandise; liquor sales; and the right to develop Outparcels I and C.

B. Land Subject to Agreement. The real property which is the subject of this Agreement is described as:

(i) a legal description of the real property is set forth in Exhibit “E” and “E-1”.

The real property will ultimately consist of approximately 41.85 acres (including the Community Park) after adjustment to Exhibit “F” for realignment of Shelter Cove Lane and addition of the Exchange Parcel pursuant to Section III(S) above.

C. Land Swap. The Town and SCTC recognize that a Community Park is desirable, needed and appropriate to be owned by and serve the Town. The location provides ample parking and desirable vistas on the edge of Broad Creek connecting with and becoming an integral link to the Town’s proposed Chaplin Park Linear Trail providing a location for walking, entertainment, educational activities, picnicking, and non-organized sports activities and playground areas, resulting from the relocation of Shelter Cove Lane. The creation of a Town-owned Community Park in this location is also consistent with the terms and conditions of the Broad Creek Management Plan. The Community Park is shown on the Concept Plan and more fully shown and described on that certain plat thereof entitled “Boundary Reconfiguration of Shelter Cove Mall Area, a Section of Shelter Cove” dated July 5, 2012, prepared by Surveying Consultants, and identified on said Plat as “New Parcel To Be Conveyed By Shelter Cove Towne Centre, LLC, to Town of Hilton Head Island For Use As A Community Park” and that certain .14 acre parcel identified as “Area A-4, Old 60-foot Right-of-Way of Shelter Cove Lane”, a copy of which is attached hereto and marked as Exhibit “F”.

As hereinabove more fully described, in addition to the conveyance of the Community Park to the Town, it is contemplated that SCTC will also use best efforts to obtain and add to the Community Park site an approximately .14 acre parcel lying and being within the multi-family parcel being rezoned by the Town of Hilton Head Island at the intersection of Mall Boulevard and Shelter Cove Lane, consisting of a portion of the roadbed of Shelter Cove Lane in its original configuration as more fully shown on Exhibit "F" attached hereto. As more fully described in Paragraph V (D), in exchange for the Community Park the Town has agreed to convey to SCTC, to become a part of the Mall Tract, a 4.90 acre tract ("Exchange Parcel") lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres", a copy of which is attached hereto and marked Exhibit "G". The Exchange Parcel shall be used to construct multi-family dwelling units and related recreation and club facilities as shown on the Concept Plan and in accordance with Ordinance Number _____.

D. Applicable Land Use Regulations.

(i) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by Section 6-31-10, *et seq.*, the laws applicable to the development of the real property subject to this Agreement are contained by reference in Ordinance No. ____ of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled "An

Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to 134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date”, (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, provided however, the Town may apply later enacted laws to the real property relating to the development applications, submittals and reviews, so long as such laws apply Town-wide, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Company, a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended. The Town shall not apply subsequently adopted laws to the Mall Tract or the Project unless the Town has held a public hearing and has determined:

- a. the proposed, subsequent laws are not in conflict with Ordinance No. _____ or the Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement;
- b. the proposed, subsequent laws are essential to the public health, safety, or welfare and the proposed, subsequent laws expressly state that they apply to a development that is subject to a development agreement;
- c. the proposed, subsequent laws are specifically anticipated and provided for in this Agreement;

d. the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the Town, would pose a serious threat to the public health, safety or welfare; or

e. this Agreement is based on substantially and materially inaccurate information supplied by SCTC. Nothing herein shall preclude SCTC from agreeing, on a case by case basis, to abide by such new laws, regulations, or ordinances subsequently passed by the Town which it, in its sole discretion, deems appropriate; and in such case the laws, regulations, or ordinances, so agreed by SCTC shall become part of the Land Development Regulations.

(ii) Vesting Rights. Subject to the provisions of sub-paragraph D(i) above, all rights, entitlements and prerogatives accorded to SCTC by this Agreement shall immediately constitute vested rights for the redevelopment of the Mall Tract, including the Exchange Parcel.

Paragraph IV (D) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-40 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

(iii) Building Codes and Laws Other Than Land Use Regulations. SCTC, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any current or subsequently adopted building, housing, electrical, mechanical, and plumbing, gas or other standard codes adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, gas or other standard codes subsequently adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the Town to exercise governmental powers and pass laws not applicable to redevelopment of the Mall Tract including, but not limited to, police power measures of general application, the power of eminent domain and the power to levy and collect taxes; provided, however that laws applicable to the Development of the real property shall be subject to Section IV(D).

(iv) Local Development Permits and Other Permits Needed. The parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the development of the Project:

(a). Zoning Map Amendment, plat approvals (preliminary, conditional or final), roads, drainage construction plan approvals, building permits, certificates of occupancy, water and/or sewer development contracts, and utility construction and operating permits, as well as approval by various entities under the LMO, including but not limited to the Development Plan Review process and the Design Review Board.

(b). The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve SCTC of the necessity of complying with the law governing permit requirement, conditions, terms or restrictions.

V. INFRASTRUCTURE COSTS.

The Town and SCTC recognize that the preponderance of the direct costs associated with the implementation of this Development Agreement will be borne by SCTC, and certain specific other necessary services and improvements will be provided by separate governmental or quasi-governmental entities, and not by the Town, except as hereinafter set forth. For clarification, the parties make specific notes of the following:

A. Facilities and Services. Although the nature of this project prevents SCTC from providing exact completion dates, the general phases and approximate timing of construction and development are set forth in Exhibit "I" attached hereto and incorporated herein by reference. SCTC certifies that the services and facilities will be in place at the time provided herein, and as to road, sewer, and water infrastructure, at the time commercial facilities or multi-family dwelling units are offered for occupancy to the public. It is understood that SCTC will be required to comply with all requirements of the LMO and Town Municipal Code to obtain a Certificate of Compliance ("COC") and/or Certificate of Occupancy ("CO") and that any occupancy of the units prior to receipt of said COC or CO shall be deemed a violation of the LMO, Municipal Code, and this Agreement. Subject to compliance with applicable laws and all provisions of this Agreement, the Town hereby authorizes SCTC, on its own or through its affiliated

companies, to install the facilities. Notwithstanding any provision herein to the contrary, SCTC hereby assures the Town that adequate facilities shall be available concurrent with the phase of development.

B. Shelter Cove Lane Relocation. Shelter Cove Lane, as presently depicted on Exhibit "A", is an existing private road owned and maintained by Shelter Cove Harbour Company, Inc., a private, non-profit property owners association of which SCTC is a member. In order to provide for the Community Park, as hereinabove described, and with the consent of the Shelter Cove Harbour Company, Inc., SCTC intends to relocate Shelter Cove Lane in conformity with the Concept Plan at its sole cost and expense and to be responsible for all costs associated with the creation, installation and design of the on-street parking, including all landscaping, all as shown in the Concept Plan for that portion of Shelter Cove Lane between the entrance to the Newport Community and the currently existing Veterans' Memorial. All on-street parking shall remain public and shall be constructed with pervious material, such as pervious pavers, pervious concrete, or other material approved by the Administrator and Shelter Cove Harbour Company, Inc. Parcel B-4 as shown on Exhibit "F" shall be conveyed by the Town to the Shelter Cove Harbour Company, Inc., or its designee for on-street parking.

The Town, at its option, may choose to build additional on-street parking along Shelter Cove Lane northeast of its intersection with Mall Boulevard as indicated on the Concept Plan, but is under no obligation to do so. The roadbed of the original Shelter Cove Lane that is shown on Exhibit "F" in its current configuration shall be abandoned by the Shelter Cove Harbour Company, Inc., its current owner, and quit-claimed to SCTC, in exchange for a quit-claim deed for the right-of-way of the reconfigured Shelter Cove Lane as shown on the Concept Plan and Exhibit "F". At the discretion of the Town, upon the exchange of right-of-way as set forth above, Shelter Cove Harbour Company, Inc. shall enter into a Maintenance Agreement for the right-of-way of Shelter Cove Lane (from the southwestern terminus of Shelter Cove Lane with Hwy. 278 to the northern terminus of Shelter Cove Lane with Hwy. 278), with the Town and the Town shall assume all maintenance responsibility for the same with the consent of Shelter Cove Harbour Company, Inc.

C. Development of Outparcels I and C. SCTC recognizes and acknowledges that previous amendments to the Palmetto Dunes Resort Master Plan of Parcels I and C, as shown on the Concept Plan, prohibited any development on the property. The Concept Plan contemplates the utilization by SCTC for development on these parcels and mutually agrees that an Order of Settlement pursuant to Civil Action No.: 91-CP-07-1071 dated the 30th day of March, 1992, placed conditions on the development of these parcels and subsequently a Declaration of Covenants and Restrictions provided limited development on the aforementioned parcels (“Restrictions”). The Restrictions provided that the Declarant, Owner and Town of Hilton Head Island, South Carolina, would have the right to enforce each and all of the Restrictions, Conditions and Covenants imposed by the Declaration by any proceeding in law or in equity. Further, the restrictions provided, among other things, that the Restrictions would inure to the benefit of and be enforceable by the Declarant, Owner and Town of Hilton Head Island, South Carolina, for a period of twenty (20) years and for automatic terms of twenty (20) years thereafter. Accordingly, the Town has found and SCTC agrees that it is in the best interest of the parties to extinguish the Restrictions and allow the development contemplated herein and each party agrees to execute appropriate restriction extinguishments on Outparcels I and C. In addition to the above, subject to the approval of the Town and the extinguishment of any restrictions prohibiting such, SCTC shall be permitted to locate signage in accordance with the applicable sign ordinances of the LMO on Outparcel II as shown on Exhibit “J”.

D. Community Park Improvements and Maintenance. It has been agreed between the Town and SCTC that the Community Park will create a benefit to both parties hereto. SCTC, as the current owner of the Community Park, shall comply with the following requirements relative to development and sale of the Community Park (as hereinafter described) to the Town upon the completion of improvements to the Community Park:

- (i) Park Design Plan. Prior to the commencement of any construction on the Community Park, SCTC will cause the development of a Park Design Plan (“Park Design Plan”) for the Community Park. The Town and SCTC will jointly agree on the Park Design Plan for the Community Park to satisfy the needs and

requirements of the Town, SCTC and the general public. This Park Design Plan shall include the Park Improvement Plan as well as Design and Construction standards and all necessary documents to construct the Community Park;

(ii) Cost Estimate. Prior to the commencement of any construction on the Community Park, the Town and SCTC will develop and jointly approve a Cost Estimate ("Cost Estimate") which will include all elements associated with the Park Design Plan as set forth in sub-paragraph (i) above, including all projected costs of site work, costs of improvements, equipment costs, building costs, pier installation, engineering, architectural costs, landscape architectural, construction management fees, and any other fees, including permit fees, payment and performance bonds, construction interest, and any and all other costs required to complete the Community Park. In the event the Cost Estimate exceeds \$4.5 Million Dollars, SCTC and the Town will work together to make such changes as are necessary to meet the \$4.5 Million Dollars maximum Cost Estimate unless otherwise agreed by the Town and SCTC;

(iii) Responsibility for Park Improvement. SCTC, as owner of the Community Park, will be responsible for the implementation of the Park Design Plan upon receiving written acknowledgment from the Town that all Cost Estimate and design issues have been resolved and agreed upon, and upon delivery to the Town of a Payment and Performance Bond for the improvements to be made to the Community Park. SCTC shall thereafter seek construction contracts with the various vendors and contractors. The individual contracts, in addition to the normal terms and conditions, will include a minimum of a one year warranty with each vendor or builder for all construction elements at the Community Park. All contracts entered into between SCTC and vendors or contractors shall specifically provide that the Town is not acting as General Contractor or Design Professional or as a partner during the planning/construction process of the Community Park;

(iv) Information/Change Orders. During the period of design and construction of the Community Park, SCTC shall forward to the Town all submittals, notices and correspondence associated with the design, construction

and improvements to the Community Park. The Town must approve any and all change orders pursuant to the vendor or construction contracts. Additionally, the Town and SCTC shall meet during the course of construction a minimum of every two weeks and at the time of any other significant events, to address any issues or problems;

(v) Conformance Certification. Upon completion of all Park Improvements landward of the OCRM Critical Line, SCTC will submit to the Town certifications (“Conformance Certifications”) to be provided by building professionals or certified engineers that the Community Park has been completed in conformance with the Park Design Plan;

(vi) Park Completion and Conformance Certifications. Within thirty days upon receipt of the Conformance Certifications by the Town for all Park Improvements made by SCTC landward of the OCRM Critical Line described in sub-paragraph (v) above, the Town will notify SCTC in writing of any discrepancies, deviations or exceptions from the established Park Design Plan, and SCTC shall take such appropriate action with the various vendors and/or contractors to correct any deviations, or in the alternative, the Town will notify SCTC within such thirty day period after receipt of such Conformance Certifications that it accepts the Conformance Certifications as presented;

(vii) Closing Date. Thirty days following either the correction of any discrepancies identified by the Town in the Conformance Certifications or acknowledgment by the Town that the Community Park has been completed in accordance with the Park Design Plan, the Town and SCTC shall complete the purchase/sale of the Community Park (the “Closing”) for a purchase price calculated in accordance with sub-paragraph (viii) hereafter;

(viii) Purchase Price. The purchase price to be paid by the Town to SCTC for the Community Park will be equal to one-half of the construction cost (“Construction Cost”) plus the exchange of the Exchange Parcel as more fully described in Paragraph IV (C) above. Construction Cost shall be deemed to include all costs incurred by SCTC in constructing the Community Park and all improvements thereon including, but not necessarily being limited to, all

infrastructure and site work, all costs of improvements, equipment costs, engineering and design costs, architectural and landscape architectural costs, construction management fees, permit fees, construction interest, any cost for payment and performance bonds required by the Town, and any and all other costs not included in the Cost Estimate but incurred or expected to be incurred by SCTC and deemed reasonable and necessary by the Town for completion of the Community Park, including but not limited to any proposed piers, docks, or similar structures, the construction of which may be delayed by the obtaining of permits or other requirements from applicable regulatory agencies. In regard to the transfer of the Exchange Parcel, the Exchange Parcel shall be conveyed free and clear of liens and encumbrances, except for the Covenants and Restrictions described in Paragraph VI (N). Any and all ad valorem property taxes, if applicable, shall be prorated between the parties and each party will be responsible for those costs normally incurred by a Buyer and Seller in a typical sale of real property with improvements in Beaufort County, South Carolina. The Town will be responsible to pay the transfer tax on the Deed for the Exchange Parcel and SCTC shall be responsible to pay the cost of transfer tax on the Community Park Site as valued prior to the installation of improvements. Title to both the Exchange Parcel and the Community Park shall be by general warranty deed, copies of which are attached hereto as Exhibit "H".

(ix) Permits. The Town shall be responsible to obtain all permits for improvements to the Community Park required by OCRM or any other regulatory agency for those areas of the Community Park within the Critical Area.

(x) Park Management Plan. A Park Management Plan shall be entered into by and between the parties, and shall establish a system which will allow both parties hereto to utilize the Community Park for special events to avoid any conflicts of use and shall provide that upon completion of the improvements to the Community Park, the Town shall assume responsibility for its maintenance, including all of the amenities or facilities placed thereon.

E. Relocation of Santee Cooper Power Line Easement. SCTC and the Town have mutually agreed that the current location of the 100-foot power line easement

owned by Santee Cooper Cooperative within the Community Park as currently shown on Exhibit "A" will impair the ability for the enjoyment and use of the Community Park by the general public. Accordingly, SCTC shall use best efforts to relocate the power line easement within an easement not to exceed a 100-foot wide right-of-way designated as "Relocated Power Easement" on the Concept Master Plan and the Town and SCTC have agreed that the only impact to Specimen Trees as defined in LMO Section 16-6-408 shall be that considered necessary by a utility company pursuant to LMO Section 16-3-402(3). The relocation of the Santee Cooper power line easement shall be at the sole cost and expense of SCTC. The relocation of the power line easement as set forth above shall be consistent with those certain recommendations from Santee Cooper Cooperative entitled "Shelter Cove Project Recommendations", a copy of which is attached hereto and marked Exhibit "K".

F. Road and Transportation Improvements. In the event the Traffic Study or other unforeseen circumstances resulting from road and transportation improvements impact specimen trees as defined in LMO Section 16-6-408, the impact of such improvements shall be exempt from the specimen trees requirements as provided for in the LMO.

G. Additional Infrastructure. SCTC has agreed to accommodate the needs of the Town's visitors to the Community Park and to those utilizing the Mall Facilities to construct publicly accessible restrooms on the Mall Tract in a location convenient to the commercial center and Community Park. Additionally, SCTC shall provide covered storage space of approximately 1,000 square feet for storage of Community Park equipment as part of the Mall Tract in a location adjacent to Shelter Cove Lane as shown on the Concept Plan. SCTC shall be responsible for the total cost of the restrooms and storage area. SCTC shall also be responsible for the construction of all of the pathways shown on the Concept Plan that are not located within the Community Park and the remaining Town-owned portion of the Shelter Cove Community Park (not included within the Exchange Parcel), to provide public access easements over all such pathways to provide for the use and enjoyment of same by the general public. The Town and SCTC agree to evenly split all County Impact Fees such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a

credit for SCTC. The storage for Community Park equipment and the public restrooms shall not be a deduction of the commercial density of 295,000 square feet. SCTC may enter into a Maintenance Agreement with the Town for the pathways used for public purposes located within the Mall Tract, and the Town shall assume all maintenance responsibility for same at its discretion.

H. Public Roads. William Hilton Parkway is an existing public road adjacent to the Mall Tract, which is under the jurisdiction of the South Carolina Department of Transportation. The Town will not be responsible for construction or maintenance of William Hilton Parkway or any other public roads adjacent to or within the Mall Tract; provided, however, the Town agrees to cooperate and support a new corridor entranceway into the Mall Tract from William Hilton Parkway to the Community Park with a “right-in, right-out” turn into William Hilton Parkway for the purposes of providing additional access to the Community Park and the Mall Tract and allowing a public corridor of view through the Mall Tract to Broad Creek furthering the objective of opening up the Mall Tract to allow additional vistas to Broad Creek and the surrounding marshes as exemplified on the Concept Master Plan. The additional ingress and egress into the Mall Tract shall be built in accordance with all S.C. Department of Transportation standards, including acceleration and deceleration lanes. The Town and SCTC agree that there will not be a median cut across from the new corridor entranceway into the Mall Tract.

I. Potable Water. Potable water currently is, and will continue to be, supplied to the Mall Tract by the Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit “L”. SCTC will construct or cause to be constructed all necessary potable water service infrastructure within the Mall Tract which is required as part of the future development and modification of the commercial area and multi-family dwelling units, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of potable water service infrastructure serving, or the treatment of potable water supplied to the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to

facilitate timely connection to the Broad Creek Public Service District service lines and facilities.

J. Sanitary Sewer Collection. Sanitary sewer treatment and disposal currently is, and will continue to be, provided to the Mall Facilities and the multi-family dwelling units by Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit “L”. SCTC will construct or cause to be constructed all necessary sanitary sewer collection infrastructure within the Mall Tract which is required as part of the redevelopment and modification of the Mall Tract, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of sanitary sewer service disposal infrastructure serving, or the treatment of sanitary sewer generated by, the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to facilitate timely connection to the Broad Creek Public Service District service line and facilities.

K. Drainage System and Stormwater Master Plan. The redevelopment of Shelter Cove Mall and associated surrounding properties will include the design and implementation of a new Stormwater Master Plan, the elements of which must be fully compliant with the LMO and/or otherwise approved by the Town. The Master Plan will propose modifications to the existing stormwater infrastructure to meet the stormwater standards in the Town of Hilton Head Island’s Land Management Ordinance. The Town agrees to use best efforts to assist in approving and implementing the Master Plan.

Notwithstanding US Army Corps of Engineers (USACE) and OCRM determinations, the three (3) existing stormwater management ponds within the Shelter Cove Mall area shall be treated as stormwater management facilities and shall not be considered tidal or freshwater wetlands for the purposes of application of the Town of Hilton Head Island LMO. The ponds remain subject to all requirements of USACE and OCRM.

Since modifications will be made to the three (3) existing stormwater management ponds within the Shelter Cove Mall area that will significantly improve stormwater management for water quality improvement by providing for first-flush retention with 48-hour drawdown, no prior or additional filtration on site will be required.

Best efforts will be made to incorporate prior or additional on-site treatment where practical.

L. Solid Waste. All solid waste collection services within the Mall Tract currently are, and will continue to be, supplied under private contract by SCTC. The Town will not be responsible for solid waste collection services within the Mall Tract, with the exception of the Community Park.

M. Other Utility Services. All other utility services, including telephone and electric, currently are, and will continue to be, supplied directly to the Mall Tract by the applicable utility companies pursuant to the availability letters attached hereto and marked Exhibits “L-1”, “L-2” and “L-3”. SCTC will construct or cause to be constructed all other necessary utility service infrastructure which is required as part of the future development and modification of the Mall Tract. The Town will not be responsible for any construction or maintenance of such utility services infrastructure serving, or the providing of any utility services to, the Mall Tract.

N. Impact Fees.

i) Town Impact Fees. Town Impact fees shall be applicable to the multi-family dwelling units in accordance with Chapter 5, Article XVIII of the LMO including any and all available offsets and all other provisions contained therein. Due to the public/private nature of the Project, specifically including the Community Park, all Town Impact Fees received by the Town as a result of the redevelopment of the Mall Tract may be applied by the Town to the public roadway modification, including the multi-purpose pathway adjacent to William Hilton Parkway as shown on the Concept Plan, and further including any public improvements required at the entrances off William Hilton Parkway onto the through road currently identified as Mall Boulevard on the Concept Plan but recognizing that such street name must be approved by the Planning Commission of the Town.

ii) County Impact Fees. The Town and SCTC agree to evenly split all County Park Impact Fees, such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a credit for SCTC.

O. Establishment of Special Districts. The Town agrees that it will reasonably cooperate with SCTC to attempt to identify alternative funding mechanisms to assist in the timely implementation of the above-referenced infrastructure, services, and Community Park Improvements described herein. SCTC shall be responsible for the initial cost of the public infrastructure but will work with the Town, at the Town's discretion, for the establishment of a district which may allow all or a portion of cost reimbursement to SCTC of the public infrastructure developed by SCTC.

P. Open Space and Pervious Area Requirements. All parks and other public facilities conveyed to the Town or retained by SCTC shall be deemed Open Space in accordance with the terms of the LMO. It is mutually agreed between the Town and SCTC that the Community Park and the remaining portions of the Shelter Cove Community Park being rezoned by the Town not included within the boundaries of the Exchange Parcel shall be counted in calculating any open space and pervious area requirements that may be required in the redevelopment of the Mall Tract.

VI. SPECIFIC CONDITIONS OF FURTHER REDEVELOPMENT OF THE MALL TRACT.

In further consideration for the commitments made to SCTC by the Town under this Agreement, SCTC agrees to the following specific conditions regarding further development and modification of the Mall Tract. The conditions which follow are in addition to the commitments made elsewhere herein by SCTC, and under this Agreement:

A. Community Park Site. Both the Town and SCTC recognize that a Community Park is desirable, needed and appropriate to serve the Town of Hilton Head Island community in a location that provides ample parking, desirable vistas on the edge of Broad Creek connecting with and becoming an integral open space link to the Town's proposed Chaplin Park Linear Trail in order to provide a location for walking, cultural, entertainment and educational activities, picnicking, non-organized sports activities, and playground areas. The Community Park may be used by SCTC for any of the permitted uses described in the Park Improvement Plan provided such activities do not interfere with any of the Town's designated uses and prearranged times. In accordance with the terms of Paragraph V (D) above, as a portion of the Purchase Price

that the Town shall pay SCTC for the improved Community Park, the Town will convey by general warranty deed an approximately 4.90 acre parcel within Shelter Cove Community Park owned by the Town, generally to the east of the Community Park, all as more clearly shown on Exhibits "F" and "G" attached hereto. The Town shall own (in accordance with the Park Improvement Plan) and maintain the Community Park but shall have the right to convey the site to another political subdivision of South Carolina or private not-for-profit entity mutually agreed upon by SCTC and the Town (the "Park Organization"), subject to mutually agreed upon covenants and restrictions. In accordance with Paragraph V (D), the Town shall purchase the Community Park from SCTC at the Purchase Price and at the time more fully described in Paragraph V (D), including the transfer by the Town to SCTC of the Exchange Parcel. It is mutually agreed between the Town and SCTC that the Community Park shall be counted in calculating any open space or pervious area requirements of the LMO within the Mall Tract.

B. Shelter Cove Lane. As exemplified on the Concept Plan, SCTC proposes to reconfigure Shelter Cove Lane in order to allow the creation of a new waterfront Community Park paralleling Broad Creek. The public functions that will occur on the Community Park anticipate large numbers of individuals and cars utilizing all of the Mall's parking facilities and therefore the Town and SCTC agree that on-street parking will be provided for and that the right-of-way of the reconfigured Shelter Cove Lane, denoted as "Area B-1" on Exhibit "F" shall have an 80-foot right-of-way to allow for such on-street parking and the anticipated pedestrian crosswalks at the most appropriate locations. The Town agrees, to the extent necessary, to obtain title to the existing roadbed of the original Shelter Cove Lane shown on Exhibit "F", whether through its powers of eminent domain or otherwise, and that portion of the original Shelter Cove Lane roadbed that is southwest of the 4.82 acre multi-family to the Veterans' Memorial as shown on Exhibit "F" and on the Concept Master Plan.

C. Buffers and Setbacks within the Mall Tract. SCTC agrees to maintain at all times an adjacent use buffer in accordance with LMO Section 16-5-904 (as amended) adjacent to the Newport Community, the Veterans' Memorial, The Plaza at Shelter Cove Shopping Center, and William Hilton Parkway as shown on the Concept Plan. The

buffer along the Veterans' Memorial shall be measured from the northeastern most line that designates the area rezoned by the Town of Hilton Head pursuant to Ordinance No. _____. In accordance with LMO Section 16-5-904, and as a result of the redevelopment scheme approved by the Town in the Zoning Map Amendment and in this Development Agreement, the standards for pervious area and open space within the Mall Tract shall be fully satisfied within the Mall Tract as a whole, including the Community Park, but do not have to be satisfied on a site-specific basis.

SCTC agrees to have an average 50-foot or greater setback between the Broad Creek marsh critical line and proposed multi-family buildings. The overall design and landscaping of the public pathway between the multi-family dwelling units and Broad Creek shall be sufficiently designed and landscaped to provide users with a sense of separation from the multi-family dwelling units with an emphasis on trail-wide open space wide enough to accommodate emergency vehicles where necessary.

D. Traffic Study. SCTC has conducted a traffic study to determine the Level of Service at the lighted entranceway into the Mall Tract to determine the impact resulting from the modifications to the Mall Tract resulting from the Zoning Map Amendment. This traffic study shall be agreed by the Town to be in lieu of the traffic study provided for under LMO Section 16-3-1301, *et seq.* The traffic study of SCTC indicates the possibility of certain existing deficiencies at the entrances of Mall Boulevard and Shelter Cove Lane. The correction of such deficiencies may be paid for by the Town at its discretion.

E. Outside Dining. As a result of the redevelopment of the Mall Tract and the emphasis placed on its reconfiguration toward Broad Creek, the parties agree that outside dining shall be permitted upon notification by SCTC to the Town and provided such outside dining does not interfere with ingress and egress to other commercial retail shops and establishments and does not block or encroach into any road right-of-way impacting pedestrian circulation on the Mall Tract.

F. Park Edge. In order to provide the users of the Community Park the benefit of its location on the edge of Broad Creek, the Town and SCTC agree to cooperate to allow selective clearing of the buffer adjacent to Broad Creek and to use best efforts through the use of additional fill and plant material, and the location of irrigation

facilities to prevent stormwater drainage from the Community Park draining into Broad Creek to the degree feasible. Additionally, SCTC and the Town shall utilize pervious surfaces wherever possible in walkways and pathways within wetland buffers.

G. Pathway Easements. SCTC agrees that all pathway easements shall include the right of the Town to utilize same for emergency vehicle entry, particularly behind the Exchange Parcel and other multi-family parcels, to ensure that emergency vehicles, including fire trucks, have access to all areas of the Mall Tract.

H. Acceptance of Facilities. The facilities described in this section will be accepted by the Town upon tender by SCTC, provided the facilities are built in accordance with the specifications approved by the Town, and provided further that the facilities are in good condition and not subject to any monetary lien.

I. Lighting. Prior to applying for a Certificate of Compliance for the redevelopment of the Mall Tract as contemplated by this Agreement, SCTC will adhere to all applicable provisions of the LMO.

J. Pedestrian Crossings. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, and upon approval by Shelter Cove Harbour Company, Inc., SCTC will provide painted pedestrian crossings, pavers, or stamped crosswalks approved by the LMO Administrator on the relocated Shelter Cove Lane between the parking areas contemplated by this Agreement across Shelter Cove Lane for use by patrons of the Mall and visitors to the Community Park.

K. Existing Parking Agreement. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, the Parking Agreement will be revised by the Town and SCTC to accurately reflect the shared parking on the Mall Tract.

L. Parking Data. In connection with an application to the Town for development plan review approval for the redevelopment of the Mall Tract pursuant to Ordinance No. _____ of the Town of Hilton Head Island, SCTC will provide developer submitted parking data to comply with LMO Section 16-5-1209.

M. Local Vendor Preference. SCTC shall make good faith, commercially reasonable efforts to utilize the services of local vendors for all work connected with this

Agreement, including but not limited to the design, permitting, construction and landscaping as may be necessary to implement the re-development authorized by this Agreement on the Mall Tract. SCTC agrees to post notices of all job or project opportunities that have an estimated value of \$20,000.00 or more within the Mall Tract in a conspicuous location at the Hilton Head Island Town Hall, and to review all applications of Hilton Head Island located applicants to include Hilton Head based contractors and businesses.

N. Covenants and Restrictions. As evidenced in the Declarations of Covenants, Conditions and Restrictions as set forth in Exhibit "M" to this Agreement, the Community Park, the Exchange Parcel, and Parcel "C" as referenced on Exhibit "J" and any transfers of property within the re-developed Mall Tract categorized as multi-family dwellings shall be subject to various covenants and restrictions, notably prohibitions on (1) converting apartments to condominiums, (2) rentals of apartments for less than twelve (12) months per lease, and (3) sub-letting of apartments by tenants.

O. Donation of Right(s) of Way. SCTC agrees to donate any and all property owned by SCTC to the Town which may be needed in connection with the correction of any deficiencies related to required improvements or reconstruction to the existing intersections providing access to the Mall Tract.

P. Modifications to the Concept Plan. In addition to any requirements provided for in the LMO, including any approved modifications thereto, it is reasonable to anticipate that certain changes may occur in the development and construction that differ from the Concept Plan within the Mall Tract caused by changes or matters that become apparent to SCTC when the improvements are laid out within the Mall Tract. In order to provide guidance as to minor modifications (Minor Changes) in the Concept Plan as opposed to or in contrast to major modifications (Major Changes) to the Concept Plan, any Minor Changes that become necessary therefrom can be approved by the LMO Administrator and any Major Changes will require an appropriate amendment to the Development Agreement subject to the provisions of the Act.

Modifications to Approved Concept Plan.

Whenever an application is made to modify the Concept Plan, the modification shall be classified as either a major or minor modification.

Major Modifications (Major Changes). In addition to any required approvals under the Land Management Ordinance of the Town or any other applicable land development regulations, Major modifications require approval of the Town Council in accordance with the Act.

The following shall be deemed a Major modification:

- a. An increase in the height of the multi-family buildings greater than sixty (60) feet;
- b. A reduction in the wetland buffers adjacent to the multi-family buildings;
- c. Increase beyond 210 multi-family units; or
- d. Any other modifications to the Land Management Ordinance of the Town other than those found in Exhibit "D" to this Agreement.

Minor Modifications (Minor Changes). All other changes not specifically listed as a Major modification above shall be considered Minor modifications and may be approved by the LMO Administrator.

VII. COMPLIANCE REVIEWS.

As long as SCTC owns any of the Mall Tract, SCTC, its successors or assigns, shall meet with the Town, or its designee, at least once per year during the Term to review development completed by SCTC in the prior year and the development anticipated to be commenced or completed by Developer in the ensuing year. SCTC or its designee shall provide such information as may reasonably be requested, to include but not be limited to, the occupancy of the commercial areas of the Mall and the multi-family dwelling units and any development rights transferred in the prior year and anticipated to be transferred in the ensuing year, if any. SCTC or its designee shall be required to compile this information for the entire Mall Tract within a reasonable time after written request by the Town.

VIII. TERMINATION AND ASSIGNMENT.

The Town shall have the right to unilaterally terminate this Agreement should development and modification of the Mall Tract, as contemplated by this Agreement, not be substantially complete within five (5) years of the Effective Date; *provided, however*, if any litigation or appeal is instituted by one or more third parties against the Town or SCTC, or both, regarding this Agreement, the Rezoning Application, or the development

or modification of the Mall Tract, the Town and SCTC shall take such actions are permitted under 6-31-60(A)(2) of the Act to extend the termination date of this Agreement during the pendency of such litigation or appeal. This Agreement may be assigned by SCTC to a good faith purchaser of the Mall Tract.

IX. DEFAULT AND ENFORCEMENT.

The failure of the Owner, Developer or the Town to comply with the terms of this Agreement shall constitute a Default. In the event such Default is not cured within sixty (60) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches or a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such Default within such sixty (60) day period and is proceeding diligently and expeditiously to complete such cure), the non-defaulting party shall be entitled to pursue all remedies available at law or equity, including but not limited to specific performance; provided however no termination of this Agreement may be declared by the Town absent its according the Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Project in default, and provided further that nothing herein shall be deemed or construed to preclude the Town or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Land Development Regulations or this Agreement. A Default of the Owner shall not constitute a Default by Third-Party Developers, and default by Third-Party Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Property shall not be obligated for the obligations of the Owner or developer set forth in this Agreement.

X. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent

09/26/2012

courier service or by facsimile, or if by mail, on the fifth (5th) business day after deposit thereof in the United States Mail, postage pre-paid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals, or communications to the Town shall be addressed to the Town at:

Stephen G. Riley
Town Manager, Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

With a copy to:

Gregory M. Alford, Esquire
Alford Wilkins & Coltrane, LLC
P.O. Drawer 8008
Hilton Head Island, South Carolina 29938

and to the Owner at:

Mark Senn
President, Blanchard & Calhoun Commercial Corporation
2743 Perimeter Parkway
Building 200, Suite 370
Augusta, Georgia 30909

With a copy to:

William W. Jones, Jr., Esquire
Jones, Simpson & Newton
P.O. Box 1938
Bluffton, South Carolina 29910

**XI. ENTIRE AGREEMENT, AMENDMENT, MODIFICATION,
GOVERNING LAW, PARTIES IN INTEREST.**

This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein. No amendment or modification to this Agreement shall be effective unless reduced to writing, executed by both parties and approved by the Town Council of the Town. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina generally, and more specifically, pursuant to the Act. If any provision of this Agreement shall be held by a court of competent jurisdiction after a final appeal to be illegal, unenforceable, or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force

and effect. Nothing contained in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person (other than the parties hereto, their successors and permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant, or agreement contained herein.

The Town will approve changes in the location of roads, buildings, recreational amenities, and other elements which may vary at the time of permit application when more specific designs are available, provided the maximum densities and Land Development Regulations are followed.

XII. GENERAL

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by SCTC and other Third-Party Developer(s) (if any) and the Town shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the Town may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, SCTC, Third-Party Developers and the Town each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

B. Estoppel Certificate. The Town, SCTC or any Third-Party Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

- (i) that this Agreement is in full force and effect,

(ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

(iii) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

(iv) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the Town, SCTC or any Third-Party Developer or to render such party liable in any manner for the debts or obligations of another party.

D. Force Majeure. No Party shall be liable for any failure to perform its obligations under this Agreement where such failure is as a result of Acts of God or nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), orders of any kind of the government of the United States or the State of South Carolina or the courts thereof, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or industrial disturbances, and no other Party will have a right to terminate this Agreement under Section IX (Default) in such circumstances. Any Party asserting Force Majeure as an excuse for non-performance in whole or in part of its obligations under this Agreement shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excusable obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated and implemented.

E. Exhibits. All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

F. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

G. Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

H. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

I. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

J. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the Town's right and power of eminent domain under the laws of the State of South Carolina.

K. No Third Party Beneficiaries. The provisions of this Agreement may be enforced only by the Town, SCTC and Third-Party Developers. No other persons shall have any rights hereunder.

L. Transfers of Interest. Owner shall notify the Town, in writing, each time that it transfers any Development Rights hereunder to any other owner or developer. Such information shall include the legal name of the acquiring owner or developer, the current address and the name of a contact person at that entity, the location and number of acres of property transferred, a description of the Development Rights transferred and the allocation of any rights or responsibilities arising under this Agreement transferred to the acquiring owner or developer. The notification shall also include an updated Development Summary Schedule reflecting the transferred rights. The entity acquiring Development Rights hereunder shall file with the Town an acknowledgment of this Agreement as well as a commitment to be bound by them, all in a form reasonably satisfactory to the Town of Hilton Head Island.

M. Agreements to Run with the Land. This Agreement shall be recorded against the Real Property. The Agreements contained herein shall be deemed to run with the land for the Term hereof and any extensions of same. The burdens of this Agreement are binding upon, and benefits of the Agreement shall inure to, all successors in interest to the Parties to this Agreement.

N. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right as it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein.

O. Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorney's fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

XIII. STATEMENT OF REQUIRED PROVISIONS.

The Act requires that a development agreement must include certain mandatory provisions, pursuant to Section 6-31-60(A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60(A) for the required items:

A. Legal Description of the Property and the Legal and Equitable Owners. The legal description of the property is set forth in Exhibit "E" and "E-1" attached hereto. The present legal owner of the Mall Tract is Shelter Cove Towne Centre, LLC, a South Carolina limited liability company. Shelter Cove Towne Centre, LLC, is also the developer of the Mall Tract under this Agreement upon the Effective Date. The total acreage for the Mall Tract shall be 41.85 after the reconfiguration of Shelter Cove Lane,

the addition of the 4.90 acre Exchange Parcel, and the revised multi-family parcel of 4.62 acres as defined in Section III(S) above.

B. Duration of Agreement. The duration of this Agreement is five (5) years, unless extended or terminated by the parties, as may be permitted by the Act; *provided, however*, that the Town and Shelter Cove Towne Centre, LLC, acknowledge and agree that the initial term of the Agreement may be renewed for two additional five (5) year periods absent a default under the terms of the Agreement pursuant to Section IX hereof.

C. Permitted Uses, Population, Densities, Building Heights, and Intensities. A complete listing and description of permitted uses, population, densities, building intensities and heights, as well as other development related standards, are contained in Land Development Regulations, as supplemented by this Agreement and the uses on the Mall Tract are those allowed by the PD Master Plan, as amended by the approval of the Rezoning Application, this Agreement and the LMO.

D. Utility Services. The utility services available to the property are described generally above regarding water service, sewer service, cable and other telecommunications service, gas service, electrical service, telephone service, and solid waste disposal. The mandatory procedures of the Land Development Regulations will ensure availability of roads and utilities to serve the residents and tenants on a timely basis.

E. Required Public Facilities. All requirements relating to land transfers for public facilities are set forth herein. The Land Development Regulations described above and incorporated herein contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be complied with, in addition to the important provisions set forth in this Agreement. The environmentally sensitive areas located on the Mall Tract adjacent to the marshes of Broad Creek will be protected in accordance with the terms of the Land Development Regulations set forth herein.

F. Land Development Permits. The development standards for the Project shall be as set forth in the Land Development Regulations. Specific permits must be obtained prior to commencing development, consistent with the standards set forth in the Land Development Regulations. Building permits must be obtained under applicable law

for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and Army Corps of Engineers, among other required entities, when applicable, prior to any impact on jurisdictional wetlands. It is specifically understood that failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms, or restrictions, unless otherwise provided hereunder. This Agreement is contingent upon the Developer obtaining approval from the Town of the Rezoning Application.

G. Comprehensive Plan and Development Agreement. The Town has determined that the development and modification of the Mall Tract contemplated by this Agreement is consistent with the Town's Comprehensive Plan, as recently amended, and with the Land Development Regulations.

H. Terms for Public Health, Safety, and Welfare. The legal process which resulted in the approval of the Rezoning Application for the Mall Tract included considerable input to assure the Town that the redevelopment and modification of the Shelter Cove Mall contemplated by this Agreement adequately addresses applicable issues of public health, safety, and welfare. The terms and conditions of the approval of the Rezoning Application serve that purpose, together with other terms and conditions contained in this Agreement.

I. Historic Structures. No specific terms relating to historic structures are pertinent to this Agreement. No historic structures exist on the Mall Tract.

[Signature pages follow]

09/26/2012

IN WITNESS WHEREOF, the Town has caused this Agreement to be signed and sealed this _____ day of _____, 2012, pursuant to Ordinance No. _____, duly adopted by the Town Council of the Town on _____, 2012.

**SIGNED, SEALED AND
DELIVERED IN THE PRESENCE
OF:**

Town of Hilton Head Island, South Carolina

By: _____

Attest: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that _____
and _____ personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 2012.

Notary Public for South Carolina
My Commission Expires:_____

09/26/2012

IN WITNESS WHEREOF, Shelter Cove Towne Centre, LLC, has caused this Agreement to be signed and sealed this ____ day of _____, 2012.

**SIGNED, SEALED AND
DELIVERED IN THE PRESENCE
OF:**

**Shelter Cove Towne Centre, LLC,
a South Carolina limited liability
company**

By:_____

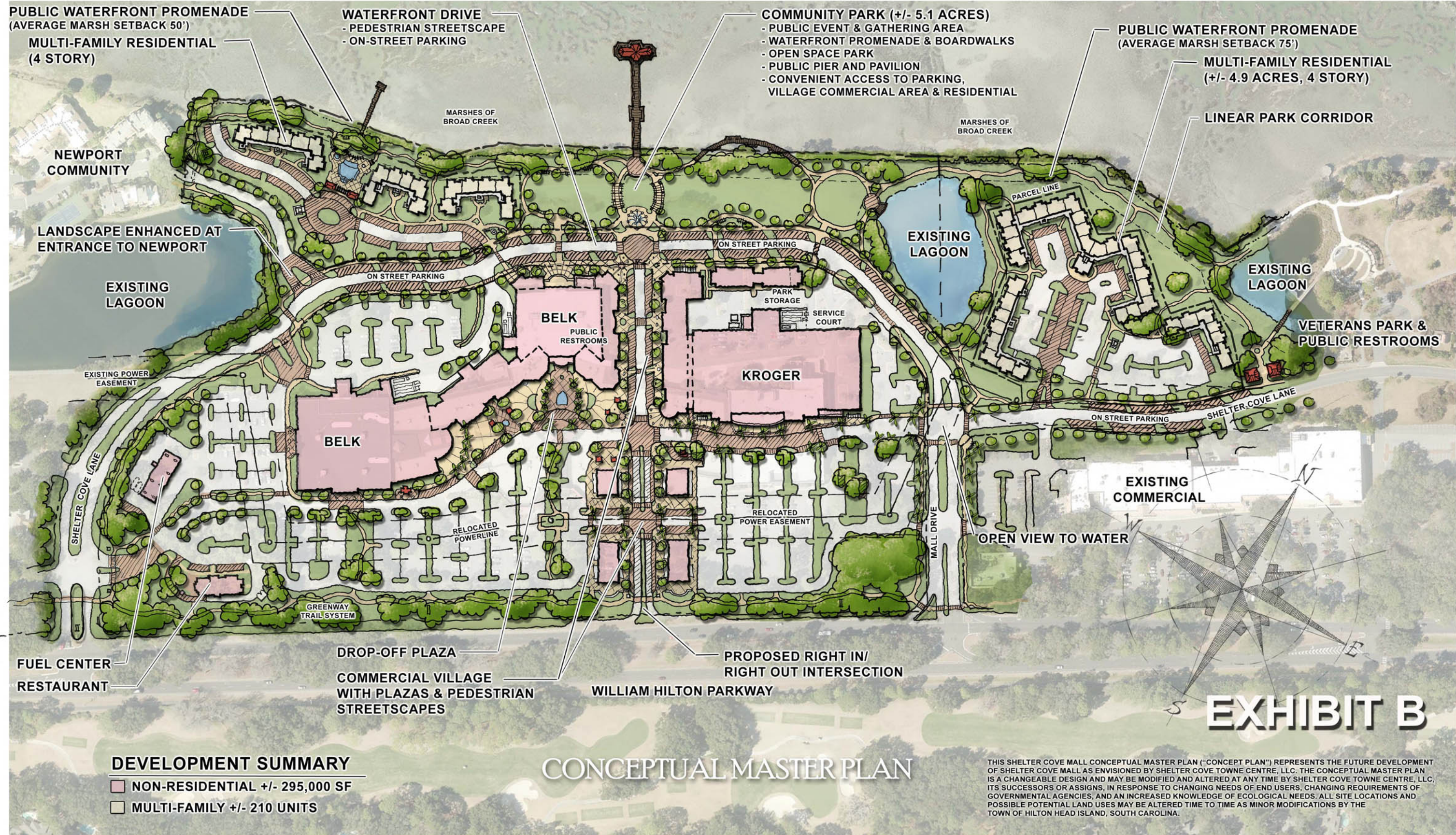
STATE OF)
)
COUNTY OF)

ACKNOWLEDGEMENT

I, the undersigned Notary Pubic, do hereby certify that _____
personally appeared before me this day and acknowledged the due execution of the
foregoing instrument.

Witness my hand and seal this ____ day of _____, 2012.

Notary Public for South Carolina
My Commission Expires:_____



PLAN IS CONCEPTUAL AND SUBJECT TO CHANGE

Prepared For:



BLANCHARD & CALHOUN
COMMERCIAL
AUGUSTA, GA

SHELTER COVE MALL REDEVELOPMENT

Hilton Head Island, SC
May 18, 2012



Prepared By:

Wood Partners Inc. WPI

Landscape Architects
Land Planners



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather L. Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: September 24, 2012
SUBJECT: Proposed Ordinance No. 2012-24 – First Reading
Authorizing the sale of the Town's property in exchange for land owned by SCTC, LLC

There have been no changes made to this agenda item since it was included in the August 7, 2012 packet.



MEMORANDUM

TO: Town Council
CC: Gregory M. Alford, Charles Cousins

FROM: Stephen G. Riley, ICMA-CM, Town Manager

DATE: 8/1/2012

SUBJECT: Mall at Shelter Cove- Land Swap

Recommendation: Recommend approval of the exchange of real property with Shelter Cove Towne Centre, LLC.

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the exchange of real property wherein the property conveyed to SCTC will be developed into multi-family dwelling units and the property conveyed to the Town will be developed into a Community Park.

Background: In consideration of SCTC conveying property to the Town and the development of a Community Park as part of the redevelopment of the Mall at Shelter Cove, the Town has agreed to convey a portion of its property to SCTC to be developed and utilized as multi-family dwelling units upon certain conditions and restrictions. These restrictions will be approved via separate Ordinance.

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE SALE OF REAL PROPERTY OWNED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, IN EXCHANGE FOR LAND OWNED BY SHELTER COVE TOWNE CENTRE, LLC IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina ("Town") owns real property which is more particularly known and described as:

That certain 4.90 acre tract lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres (hereinafter referred to as "Exchange Parcel")

WHEREAS, Shelter Cove Towne Centre, LLC, ("SCTC") owns real property which is more particularly known and described as:

That certain "New Parcel To Be Conveyed By Shelter Cove Towne Centre, LLC, to Town of Hilton Head Island For Use As A Community Park" on the "Boundary Reconfiguration of Shelter Cove Mall Area, a Section of Shelter Cove" dated July 5, 2012, prepared by Surveying Consultants, (hereafter referred to as "Community Park Parcel")

WHEREAS, the Town has negotiated and approved a Development Agreement (Ord. 2012-___) with SCTC which contemplates the exchange of the above referenced properties between the Town and SCTC, for the development of a Community Park on Broad Creek.

WHEREAS, it is contemplated that within thirty (30) days of completion of the construction and issuance of a Certificate of Compliance of the Community Park, as outlined in the Development Agreement and the Park Improvement Plan referenced therein, the Town and SCTC will exchange ownership of the Exchange Parcel and the Community Park Parcel through the execution, delivery and recording of the attached deeds or ones substantially similar, which are attached hereto as Exhibit "A".

WHEREAS, the Exchange Parcel and the Community Park Parcel will be encumbered with certain Covenants and Restrictions, or ones substantially similar, prior to the exchange, copies of which are attached hereto as Exhibit "B". The placement of Covenants and Restrictions on the Exchange Parcel will be effected by separate Ordinance No. 2012-____.

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the execution, delivery and acceptance of the attached deeds, or ones substantially similar to Exhibit "A", the authorization of execution of Covenants and Restrictions, or ones substantially similar to Exhibit "B", and to authorize the completion of the transaction described herein.

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983, As Amended),

the conveyance of real property owned by the Town of Hilton Head Island must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Execution of Deed of Town Owned Real Property to Shelter Cove Towne Centre, LLC subject to Covenants and Restrictions, acceptance of Deed of Real Property from Shelter Cove Towne Centre, LLC subject to Covenants and Restrictions and Completion of the Transaction Described in the above referenced Development Agreement:

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver the deed for the sale of Town owned property and to accept the conveyance of real property owned by Shelter Cove Towne Centre, LLC, in substantially similar forms as attached hereto as Exhibit "A"; and,
- (b) The Mayor and Town Manager are hereby authorized to place upon the Exchange Parcel and to accept the Community Park Parcel subject to Covenants and Restrictions in substantially similar forms as attached hereto as Exhibit "B"; and,
- (c) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____
DAY OF _____, 2012.**

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

ATTEST: _____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: _____

Second Reading: _____

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

GENERAL WARRANTY DEED

ALL that certain piece, parcel or lot of land being shown and described as “New Multi-Family Parcel 4.90 Ac.” on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, in fee simple, its Successors and Assigns, forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS Grantor's hand this _____ day of _____, 2012.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

2) _____
Signature of 1st Witness

By: _____
Stephen G. Riley, CP, Town Manager

3) _____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA

)

)

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4) _____ (SEAL)
Signature of Notary Public for _____
My Commission expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

GENERAL WARRANTY DEED

ALL that certain piece, parcel or lot of land being shown and described as “New Parcel to be Conveyed 4.97 Ac.” on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by PVI Shelter Cove Limited Partnership, dated August 10, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3076 at Page 2860.

AND

ALL that certain piece, parcel or lot of land being shown and described as "Old 60' R/W of Shelter Cove Lane Area A-4 0.14 Ac." on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina" dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by Shelter Cove Harbour Company, recorded on _____, 2012, in the Office of the Register of Deeds for Beaufort County, South Carolina in Book _____ at Page _____.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0030 0000

This Deed was prepared in the law office of Alford, Wilkins & Coltrane, LLC, Post Office Drawer 8008, Hilton Head Island, South Carolina, 29938-8008, by John W. Wilkins, Esq.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, in fee simple, its Successors and Assigns, forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS Grantor's hand this _____ day of _____, 2012.

(THIS SPACE INTENTIONALLY LEFT BLANK)

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

SHELTER COVE TOWNE CENTRE, LLC

2) _____
Signature of 1st Witness

By: _____

3) _____
Signature of 2nd Witness (the Notary Public)

Its: _____

STATE OF SOUTH CAROLINA

)

)

UNIFORM ACKNOWLEDGMENT

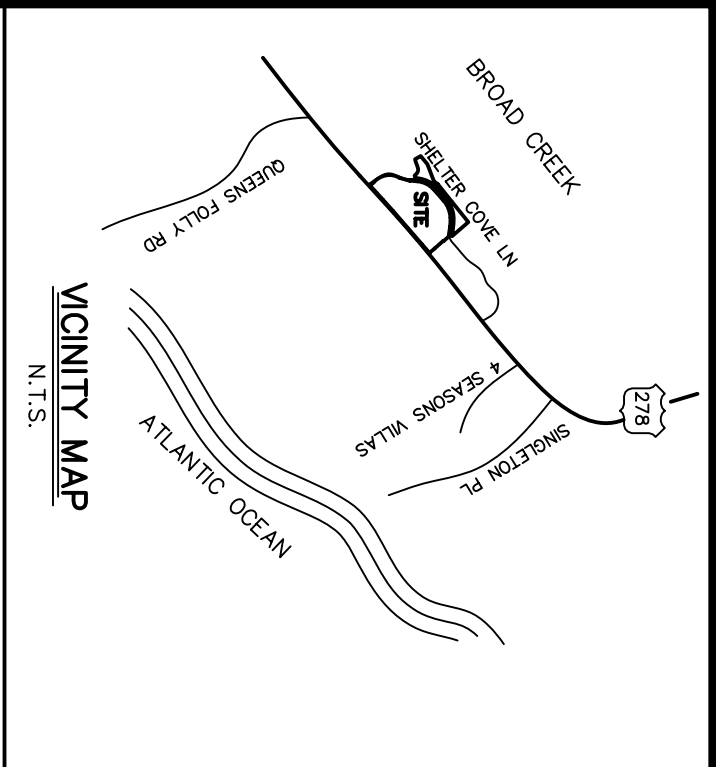
COUNTY OF BEAUFORT

)

I, the undersigned Notary Public do hereby certify that
_____ appeared before me this day and, in the presence of the two
witnesses above named, acknowledged the due execution of the foregoing instrument on behalf
of Shelter Cove Towne Centre, LLC.

Witness my hand and seal this _____ day of _____, 2012.

4) _____ (SEAL)
Signature of Notary Public for _____
My Commission expires: _____



SPECIAL NOTE
Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of annual flooding. Flood hazard areas are shown on the Flood Insurance Rate Map (FIRM) for the area. Flood regulations require that certain flood hazard measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the applicable flood hazard regulations for the area. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

I, the undersigned, as the Owner of Record of parcel R520-012-008-0000, agree to the recording of this plat.

SIGNATURE _____ DATE _____

I, the undersigned, as the Owner of Record of parcel R520-012-008-0000, agree to the recording of this plat.

SIGNATURE _____ DATE _____

MARSHES OF BROAD CREEK

NEW R/W OF SHELTER COVE LANE TO BE CONVEYED (AREA B's)

OLD R/W OF SHELTER COVE LANE TO BE ABANDONED (AREA A's)

LINE	LENGTH	BEARING
L1	122.48'	S 41°22'18" E
L2	21.21'	S 03°38'21" W
L3	25.15'	S 48°38'17" W
L4	16.52'	S 74°33'13" W
L5	35.93'	S 42°53'14" W
L6	33.45'	N 51°59'14" E
L7	166.83'	N 04°00'43" E
L8	47.83'	N 48°34'35" E
L9	1.86'	S 52°09'41" E
L10	18.50'	S 45°20'34" E
L11	13.42'	S 13°29'19" E
L12	13.80'	S 41°21'54" E
L13	49.79'	S 48°34'16" W
L14	13.36'	N 84°32'17" E
L15	20.42'	N 88°40'07" W
L16	67.06'	N 34°55'05" E
L17	41.43'	N 58°41'31" E
L18	97.35'	N 44°14'21" E
L19	10.03'	S 54°48'06" E
L20	178.67'	S 34°49'06" W

L23-L28 NOT USED

REVISED
SHELTER COVE
MALL PARCEL
32.33 AC.

(NO IMPROVEMENTS SHOWN)
TAX PARCEL ID. NO. R520-012-008-0028-0000

U.S. HIGHWAY 278
'WILLIAM HILTON PARKWAY'

PREPARED FOR: PVI SHELTER COVE LIMITED PARTNERSHIP
& THE TOWN OF HILTON HEAD ISLAND

ADDRESS: 424 SHELTER COVE LANE
TAX PARCEL ID. NO. R520-012-008-0028-0000

CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	550.45'	425.00'	371.47'	512.77'	N 05°12'3" W	241°22'7"
C2	161.20'	210.00'	88.32'	162.82'	N 25°49'55" E	45°37'06"
C3	146.43'	290.00'	74.28'	143.91'	N 34°16'31" E	28°43'55"
C4	106.30'	210.00'	53.78'	104.20'	N 34°16'25" E	28°43'44"
C5	104.70'	210.00'	53.46'	103.62'	N 34°55'17" E	28°43'00"
C6	72.33'	210.00'	36.33'	71.96'	N 27°14'42" E	19°42'08"
C7	120.00'	210.00'	60.72'	120.00'	N 27°14'42" E	19°42'08"
C8	61.14'	150.00'	31.00'	60.72'	S 53°02'58" E	23°21'18"
C9	33.90'	240.00'	16.98'	33.88'	N 29°00'45" W	8°03'39"
C10	121.62'	290.00'	61.72'	120.73'	S 84°55'33" W	24°01'46"
C11	122.86'	290.00'	62.36'	121.94'	S 60°46'28" W	24°16'23"
C12	37.94'	290.00'	37.91'	37.91'	S 43°31'25" W	7°19'44"
C13	107.47'	290.00'	53.46'	106.86'	S 50°13'31" W	28°13'58"
C14	159.31'	290.00'	79.66'	159.31'	S 50°13'31" W	28°13'58"
C15	21.20'	290.00'	10.61'	21.20'	S 46°32'48" W	41°12'22"
C16	89.45'	290.00'	45.08'	89.10'	S 35°36'55" W	17°40'23"
C17	158.93'	137.50'	89.68'	150.23'	N 25°29'03" W	6°13'34"
C18	28.21'	126.61'	12.61'	28.21'	N 65°30'40" E	2°38'18"
C19	372.01'	547.46'	193.51'	368.89'	N 27°17'49" E	38°55'59"
C20	283.52'	598.34'	141.76'	283.52'	N 27°17'49" E	38°55'59"
C21	120.00'	598.34'	50.92'	120.00'	N 27°17'49" E	38°55'59"
C22	71.77'	983.03'	35.90'	71.76'	N 88°30'04" E	47°03'92"
C23	31.68'	412.97'	15.85'	31.68'	N 84°10'02" W	4°33'45"
C24	121.61'	983.03'	60.88'	121.53'	N 85°14'48" W	7°03'17"
C25	206.53'	352.97'	10.32'	206.53'	S 69°20'30" W	3°20'55"
C26	41.08'	352.97'	20.55'	41.08'	N 85°13'55" E	3°01'20"
C27	18.28'	352.97'	18.28'	18.28'	N 85°13'55" E	3°01'20"
C28	21.79'	1043.03'	10.90'	21.79'	S 87°20'15" W	11°11'50"
C29	434.85'	658.36'	225.69'	428.89'	S 67°28'58" W	37°50'40"
C30	440.77'	607.48'	230.59'	431.17'	S 25°58'44" W	41°34'26"
C31	31.44'	240.00'	15.74'	31.42'	S 71°12'46" E	7°30'19"
C32	20.63'	352.97'	10.32'	20.63'	S 69°20'30" W	3°20'55"
C33	18.28'	352.97'	18.28'	18.28'	N 85°13'55" E	3°01'20"
C34	108.85'	542.22'	108.19'	108.85'	N 85°13'55" E	3°01'20"
C35	269.82'	710.00'	136.56'	268.20'	N 45°48'18" E	21°46'26"
C36	73.90'	340.00'	37.09'	73.75'	S 60°27'56" W	12°27'10"
C37	122.60'	250.76'	62.55'	121.38'	N 48°19'12" E	28°00'44"
C38	208.15'	626.47'	105.04'	207.19'	N 53°18'55" W	19°02'12"
C39	46.67'	101.71'	23.75'	46.28'	N 85°56'24" E	26°17'19"

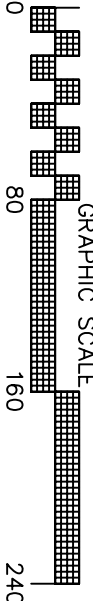
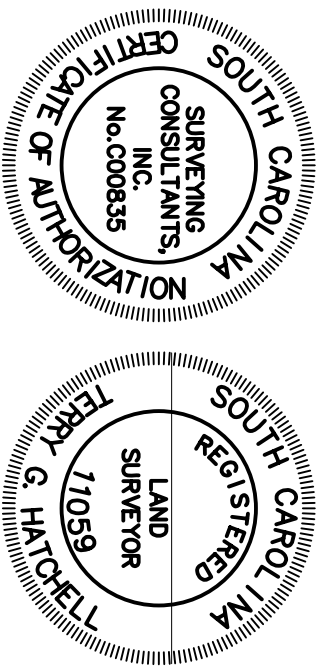
REVISED
SHELTER COVE
MALL PARCEL
32.33 AC.

(NO IMPROVEMENTS SHOWN)
TAX PARCEL ID. NO. R520-012-008-0028-0000

U.S. HIGHWAY 278
'WILLIAM HILTON PARKWAY'

PREPARED FOR: PVI SHELTER COVE LIMITED PARTNERSHIP
& THE TOWN OF HILTON HEAD ISLAND

ADDRESS: 424 SHELTER COVE LANE
TAX PARCEL ID. NO. R520-012-008-0028-0000



BOUNDARY RECONFIGURATION
OF
SHELTER COVE MALL AREA
A SECTION OF
SHELTER COVE
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
SCALE: 1" = 80'
DATE: 7/05/2012
JOB NO. SC10040E-1

SURVEYING CONSULTANTS
17 Sherington Drive, Suite C, Bluffton, SC 29910
P: 843-882-2775 F: 843-882-2776
C: 843-882-2776
COPYRIGHT © BY SURVEYING CONSULTANTS

STATE OF SOUTH CAROLINA)
) DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT) RESTRICTIONS, AND LIMITATIONS

WITNESSETH:

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the “Declaration” or these “Covenants”).

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

ARTICLE I:

Property Description

Section 1.1: The Property: The real property (“the Property”) which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

ALL that certain piece, parcel or lot of land being shown and described as “New Multi-Family Parcel 4.90 Ac.” on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by deed of Hancock Development Company, Inc., dated April 29, 1999 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1190 at Page 1309.

Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000

PART TWO LAND USE RESTRICTIONS

ARTICLE II: General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE
GENERAL

Article III:
General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

(THIS SPACE INTENTIONALLY LEFT BLANK)

TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2) _____
Signature of 1st Witness

By: _____
Stephen G. Riley, Town Manager

3) _____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4) _____ (SEAL)

Signature of Notary Public for South Carolina

My Commission expires: _____

STATE OF SOUTH CAROLINA)
) DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT) RESTRICTIONS, AND LIMITATIONS

WITNESSETH:

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the “Declaration” or these “Covenants”).

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

ARTICLE I:

Property Description

Section 1.1: The Property: The real property (“the Property”) which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

ALL that certain piece, parcel or lot of land being shown and described as “New Parcel to be Conveyed 4.97 Ac.” on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by PVI Shelter Cove Limited Partnership, dated August 10, 2011, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3076 at Page 2860.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0026 0000

-AND-

ALL that certain piece, parcel or lot of land being shown and described as “Old 60’ R/W of Shelter Cove Lane Area A-4 0.14 Ac.” on the plat entitled Boundary Reconfiguration of Shelter Cove Mall Area, A Section of Shelter Cove, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by Shelter Cove Harbour Company, recorded on _____, 2012, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book ____ at Page _____.

Beaufort County Tax Map Reference: a Portion of R520 012 00B 0030 0000

-AND-

All that certain piece, parcel or lot of land, lying and being on Hilton Head Island, Beaufort County, South Carolina, being shown and described as

“Parcel C” on that certain plat entitled “A Plat of Shelter Cove Mall, Phase II, Shelter Cove, 26 Shelter Cove Lane, As Built Survey, a Section of Palmetto Dunes Resort” prepared by Jerry L. Richardson, SCRLS 4784, Dated April 14, 1988, and revised on July 20, 1988, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 228.

Derivation Clause and Tax Map Reference Missing!

PART TWO LAND USE RESTRICTIONS

ARTICLE II: General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE GENERAL

Article III: General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any

event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

SHELTER COVE TOWNE
CENTRE, LLC, a South Carolina
limited liability company

2) _____
Signature of 1st Witness

By: _____

3) _____
Signature of 2nd Witness (the Notary Public)

Its: _____

STATE OF SOUTH CAROLINA

)

COUNTY OF BEAUFORT

)

UNIFORM ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that _____
appeared before me this day and, in the presence of the two witnesses above named,
acknowledged the due execution of the foregoing instrument on behalf of Shelter Cove
Towne Centre, LLC.

Witness my hand and seal this _____ day of _____, 2012.

4) _____ (SEAL)
Signature of Notary Public for _____
My Commission expires: _____



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather L. Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: September 24, 2012
SUBJECT: Proposed Ordinance No. 2012-28 – First Reading
Authorizing the placement of covenants and restrictions on the Town's property

There have been no changes made to this agenda item since it was included in the August 7, 2012 packet.



MEMORANDUM

TO: Town Council
CC: Gregory M. Alford, Charles Cousins

FROM: Stephen G. Riley, ICMA-CM, Town Manager

DATE: 8/1/2012

SUBJECT: Mall at Shelter Cove- Establishment of Covenants and Restrictions on Town owned Property

Recommendation: Recommend approval of the establishment, execution and recording of Covenants and Restrictions on Town owned property.

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the exchange of real property wherein the property conveyed to SCTC will be developed into multi-family dwelling units and that the multi-family units must remain apartments.

Background: In consideration of SCTC conveying property to the Town and the development of a Community Park as part of the redevelopment of the Mall at Shelter Cove, the Town has agreed to convey a portion of its property to SCTC to be developed and utilized as multi-family dwelling units upon certain conditions and restrictions. Specifically, the parties have agreed that these multi-family units are to remain apartments and cannot be converted into condominiums, that if rented, they will not be rented for terms less than twelve (12) months and that tenants may not sub-let the units. In order to place these restrictions upon the property, a Declaration of Covenants and Restrictions must be executed and recorded prior to the Town's conveyance of the property.

PROPOSED ORDINANCE: 2012-28

ORDINANCE: 2012-_____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE ESTABLISHING OF COVENANTS AND RESTRICTIONS ON REAL PROPERTY IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, The Town of Hilton Head Island, South Carolina ("Town") owns real property which is more particularly known and described as:

That certain 4.90 acre tract lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled "Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park", prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as "New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres (hereinafter referred to as the "Exchange Parcel")

WHEREAS, pursuant to Ordinance No. 2012-_____ and The Mall At Shelter Cove Development Agreement, it is contemplated that the Town will convey the Exchange Parcel to Shelter Cove Towne Centre, LLC ("SCTC") in conjunction with the redevelopment of the Mall at Shelter Cove; and

WHEREAS, SCTC will develop multi-family dwelling units on the Exchange Parcel subject to certain restrictions as agreed upon between SCTC and the Town; and

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to record and establish a Declaration of Covenants and Restrictions in a

substantially similar form as attached hereto as Exhibit "A"; and

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983, as amended), the disposition of an interest in real property must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Establishment of Covenants and Restrictions:

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver a Declaration of Covenants and Restrictions, or a document substantially similar in form and substance to that, which is attached hereto as Exhibit "A"; and,
- (b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____
DAY OF _____, 2012.**

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

ATTEST: _____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: _____

Second Reading: _____

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

STATE OF SOUTH CAROLINA)
) DECLARATION OF COVENANTS,
COUNTY OF BEAUFORT) RESTRICTIONS, AND LIMITATIONS

WITNESSETH:

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the “Declaration” or these “Covenants”).

NOW THEREFORE, Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants, and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the Land herein referred to as the Property, and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance.

ARTICLE I:

Property Description

Section 1.1: The Property: The real property (“the Property”) which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described as follows:

ALL that certain piece, parcel or lot of land being shown and described as “New Multi-Family Parcel 4.90 Ac.” on the plat entitled Boundary Reconfiguration of 4.90 Acres New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park, Hilton Head Island, Beaufort County, South Carolina” dated June 12, 2012 prepared by Terry G. Hatchell, RLS#11059 and recorded in Plat Book ____ at Page ____ in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is made to said plat of record.

This being a portion of the same property conveyed to the within Grantor by deed of Hancock Development Company, Inc., dated April 29, 1999 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1190 at Page 1309.

Beaufort County Tax Map Reference: A Portion of R520 012 00C 0002 0000

PART TWO LAND USE RESTRICTIONS

ARTICLE II: General Land Use Restrictions and Obligations

Section 2.1: Restrictions on Converting Apartments to Condominiums. In the event any apartments are erected, constructed, or otherwise built on or within the Property, said apartments shall not be converted into condominiums in any manner.

Section 2.2: Restrictions on Rentals of Apartments for Less than Twelve Months per Lease. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the owner(s) of any apartment(s) shall not execute or enter into any lease(s) with a term for less than twelve (12) months per lease. In the event that such a lease is executed or entered into, said lease shall be considered void and of no legal effect.

Section 2.3: Restrictions on Sub-Letting of Apartments by Tenants. In the event any apartments are erected, constructed, or otherwise built on or within the Property, the tenant(s) of any apartment(s) shall not lease or sub-let the apartment(s) to any third parties.

PART THREE
GENERAL

Article III:
General Provisions

Section 3.1: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

Section 3.2: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by grantee, its agents, successors or assigns, Declarant shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees and costs whether or not incurred in conjunction with appellate proceedings.

Section 3.3: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of former President George W. Bush and the original Owner of the Property.

Section 3.4: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to the Covenants, do covenant and agree, and are thereby estopped to deny, that any reserved right or function of the Declarant, and any other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 3.5: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including but not limited to legal fees incurred by the Defendant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 3.6: Gender, Tense, and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 3.7: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 3.8: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

(THIS SPACE INTENTIONALLY LEFT BLANK)

TOWN OF HILTON HEAD
ISLAND, SOUTH CAROLINA

2) _____
Signature of 1st Witness

By: _____
Stephen G. Riley, Town Manager

3) _____
Signature of 2nd Witness (the Notary Public)

STATE OF SOUTH CAROLINA

)

UNIFORM ACKNOWLEDGMENT

COUNTY OF BEAUFORT

)

I, the undersigned Notary Public do hereby certify that Stephen G. Riley appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Witness my hand and seal this _____ day of _____, 2012.

4) _____ (SEAL)

Signature of Notary Public for South Carolina

My Commission expires: _____



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather L. Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: September 24, 2012
SUBJECT: Proposed Ordinance No. 2012-29 – First Reading
Authorizing the extinguishment of covenants and restrictions on the Town's property

There have been no changes made to this agenda item since it was included in the August 7, 2012 packet.



MEMORANDUM

TO: Town Council
CC: Gregory M. Alford, Charles Cousins

FROM: Stephen G. Riley, ICMA-CM, Town Manager

DATE: 8/1/2012

SUBJECT: Mall at Shelter Cove- Extinguishment of Covenants and Restrictions on Out Parcel I and Parcel C

Recommendation: Recommend approval of the extinguishment of Covenants and Restrictions on Out Parcel I and Parcel C

Summary: The Development Agreement with Shelter Cove Towne Centre, LLC (the Mall Redevelopment Agreement) contemplates the development of certain parcels referred to as Out Parcel I and Parcel C. The consent of the Town of Hilton Head Island is needed to extinguish the existing covenants and restrictions to allow development of the parcels.

Background: The prior owners of these parcels (HHO 177 Company, Limited Partnership and Pacific Mutual Realty Finance, Inc.) placed development restrictions on the parcels and recorded Declarations of Covenants and Restrictions which run with and bind the parcels. The Covenants and Restrictions provide that they are “enforceable by the Declarant, Owner and the Town of Hilton Head Island, South Carolina” for a period of twenty (20) years with automatic twenty (20) year renewals. SCTC is the current owner and successor in interest to the parcels and covenants.

PROPOSED ORDINANCE: 2012-29

ORDINANCE: 2012-_____

AN ORDINANCE OF THE TOWN OF HILTON HEAD, SOUTH CAROLINA, AUTHORIZING THE EXTINGUISHMENT OF COVENANTS AND RESTRICTIONS ON REAL PROPERTY IN CONJUNCTION WITH THE MALL AT SHELTER COVE DEVELOPMENT AGREEMENT AND PURSUANT TO THE AUTHORITY OF S. C. CODE ANN. § 5-7-40 (SUPP. 2011), AND § 2-7-20, *CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA*, (1983, As Amended); AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

LEGISLATIVE FINDINGS

WHEREAS, Shelter Cove Towne Centre, LLC, ("SCTC") owns real property which is more particularly known and described as:

Those certain pieces, parcels or tracts of land shown as "Out Parcel I" and "Parcel C" on the ALTA/ACSM Land Title Survey for Shelter Cove Project dated August 18, 2003, prepared by Smith Surveyors, Inc. Land Surveying, attached hereto as Exhibit "A", (hereinafter collectively referred to as "Out Parcels")

WHEREAS, the prior owners of the Out Parcels, HHO 177 Company, Limited Partnership and Pacific Mutual Realty Finance, Inc., placed development restrictions on the Out Parcels pursuant to a Declaration of Covenants and Restrictions recorded May 7, 1992 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 598 at Page 431 and First Amendment to Declarations of Covenants and Restrictions recorded September 23, 1999 in Record Book 1215 at Page 2316 (hereinafter collectively referred to as "CAR"); and

WHEREAS, the CAR run with and bind the Out Parcels and are "enforceable by the Declarant, Owner and the Town of Hilton Head Island, South Carolina" for a period of twenty (20) years with automatic twenty (20) year renewals; and

WHEREAS, SCTC is the successor in interest to the CAR, and as Declarant and

Owener, and with the consent of the Town of Hilton Head Island, South Carolina, desires to extinguish the CAR as to the Out Parcels.

WHEREAS, pursuant to Ordinance No. 2012-____, The Mall At Shelter Cove Development Agreement, it is contemplated that the Out Parcels be developed by SCTC; and

WHEREAS, the Town Council of the Town of Hilton Head Island, South Carolina has determined that it is in the best interests of the Town of Hilton Head Island, South Carolina, to authorize the extinguishment of the CAR as to the Out Parcels, and to authorize the completion of the transaction described herein.

WHEREAS, under the authority of S.C. Code Ann. § 5-7-40 (Supp. 2011), and § 2-7-20, *Code of the Town of Hilton Head Island , South Carolina*, (1983, as amended), the disposition of an interest in real property must be authorized by the adoption of an ordinance by the Town Council for the Town of Hilton Head Island, South Carolina.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Approval of the Extinguishment of Covenants and Restrictions:

- (a) The Mayor and Town Manager are hereby authorized to execute and deliver any documents necessary to effectively extinguish any development restrictions on Out Parcels, which are shown on the attached Exhibit "A"; and,
- (b) The Mayor and Town Manager are hereby authorized to take all other and further actions as may be necessary to complete the transaction described herein.

Section 2. Severability:

If any section, phrase, sentence or portion of this Ordinance is, for any reason, held or deemed to be invalid or unconstitutional by any court of competent jurisdiction, then such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and shall not affect the remaining portion thereof.

Section 3. Effective Date:

This Ordinance shall become effective upon its adoption by the Town Council for the Town of Hilton Head Island, South Carolina.

**PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL FOR
THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, ON THIS ____
DAY OF _____, 2012.**

THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA

By: _____
Drew A. Laughlin, Mayor

ATTEST: _____
Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: _____

Second Reading: _____

Approved as to form: _____
Gregory M. Alford, Town Attorney

Introduced by Council Member: _____

[illegible][illegible]

Date August 19, 1961
JOG # 000010

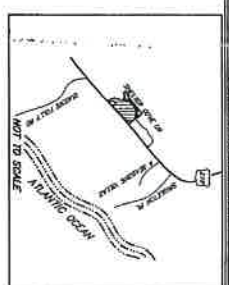
**COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA**

I, JAMES E. HAYES, JR., County Clerk of Beaufort County, South Carolina, do hereby certify that the following persons were duly elected as members of the Board of Commissioners at the regular election held on November 6, 1984:

ROBERT PAUL RAY ALF NIXE

LINE MEASUREMENT TABLE

LINE TYPE	MEASUREMENT
1. 1/2" LINE	1/2"
2. 3/4" LINE	3/4"
3. 1" LINE	1"
4. 1 1/2" LINE	1 1/2"
5. 2" LINE	2"
6. 2 1/2" LINE	2 1/2"
7. 3" LINE	3"
8. 3 1/2" LINE	3 1/2"
9. 4" LINE	4"
10. 4 1/2" LINE	4 1/2"
11. 5" LINE	5"
12. 5 1/2" LINE	5 1/2"
13. 6" LINE	6"
14. 6 1/2" LINE	6 1/2"
15. 7" LINE	7"
16. 7 1/2" LINE	7 1/2"
17. 8" LINE	8"
18. 8 1/2" LINE	8 1/2"
19. 9" LINE	9"
20. 9 1/2" LINE	9 1/2"
21. 10" LINE	10"
22. 10 1/2" LINE	10 1/2"
23. 11" LINE	11"
24. 11 1/2" LINE	11 1/2"
25. 12" LINE	12"
26. 12 1/2" LINE	12 1/2"
27. 13" LINE	13"
28. 13 1/2" LINE	13 1/2"
29. 14" LINE	14"
30. 14 1/2" LINE	14 1/2"
31. 15" LINE	15"
32. 15 1/2" LINE	15 1/2"
33. 16" LINE	16"
34. 16 1/2" LINE	16 1/2"
35. 17" LINE	17"
36. 17 1/2" LINE	17 1/2"
37. 18" LINE	18"
38. 18 1/2" LINE	18 1/2"
39. 19" LINE	19"
40. 19 1/2" LINE	19 1/2"
41. 20" LINE	20"
42. 20 1/2" LINE	20 1/2"
43. 21" LINE	21"
44. 21 1/2" LINE	21 1/2"
45. 22" LINE	22"
46. 22 1/2" LINE	22 1/2"
47. 23" LINE	23"
48. 23 1/2" LINE	23 1/2"
49. 24" LINE	24"
50. 24 1/2" LINE	24 1/2"
51. 25" LINE	25"
52. 25 1/2" LINE	25 1/2"
53. 26" LINE	26"
54. 26 1/2" LINE	26 1/2"
55. 27" LINE	27"
56. 27 1/2" LINE	27 1/2"
57. 28" LINE	28"
58. 28 1/2" LINE	28 1/2"
59. 29" LINE	29"
60. 29 1/2" LINE	29 1/2"
61. 30" LINE	30"
62. 30 1/2" LINE	30 1/2"
63. 31" LINE	31"
64. 31 1/2" LINE	31 1/2"
65. 32" LINE	32"
66. 32 1/2" LINE	32 1/2"
67. 33" LINE	33"
68. 33 1/2" LINE	33 1/2"
69. 34" LINE	34"
70. 34 1/2" LINE	34 1/2"
71. 35" LINE	35"
72. 35 1/2" LINE	35 1/2"
73. 36" LINE	36"
74. 36 1/2" LINE	36 1/2"
75. 37" LINE	37"
76. 37 1/2" LINE	37 1/2"
77. 38" LINE	38"
78. 38 1/2" LINE	38 1/2"
79. 39" LINE	39"
80. 39 1/2" LINE	39 1/2"
81. 40" LINE	40"
82. 40 1/2" LINE	40 1/2"
83. 41" LINE	41"
84. 41 1/2" LINE	41 1/2"
85. 42" LINE	42"
86. 42 1/2" LINE	42 1/2"
87. 43" LINE	43"
88. 43 1/2" LINE	43 1/2"
89. 44" LINE	44"
90. 44 1/2" LINE	44 1/2"
91. 45" LINE	45"
92. 45 1/2" LINE	45 1/2"
93. 46" LINE	46"
94. 46 1/2" LINE	46 1/2"
95. 47" LINE	47"
96. 47 1/2" LINE	47 1/2"
97. 48" LINE	48"
98. 48 1/2" LINE	48 1/2"
99. 49" LINE	49"
100. 49 1/2" LINE	49 1/2"
101. 50" LINE	50"
102. 50 1/2" LINE	50 1/2"
103. 51" LINE	51"
104. 51 1/2" LINE	51 1/2"
105. 52" LINE	52"
106. 52 1/2" LINE	52 1/2"
107. 53" LINE	53"
108. 53 1/2" LINE	53 1/2"
109. 54" LINE	54"
110. 54 1/2" LINE	54 1/2"
111. 55" LINE	55"
112. 55 1/2" LINE	55 1/2"
113. 56" LINE	56"
114. 56 1/2" LINE	56 1/2"
115. 57" LINE	57"
116. 57 1/2" LINE	57 1/2"
117. 58" LINE	58"
118. 58 1/2" LINE	58 1/2"
119. 59" LINE	59"
120. 59 1/2" LINE	



*Shafter Cove Project!
The last of Shafter Cove
Bldg Project No. 20020462,
20 Shafter Cove Lane, Nelson Head Island, SD*

Dr. F. Gortals is the second vice and first of the Scientific Department.

HONORARY DALLS OFFICE
Hogoblen Jn. NJ
In the State of South Carolina
Date of Birth August 18, 2003
Date of Last Physical September 19, 2003
Medical Report No. 2003-046-07

Surgery performed for:
Small Bowel Injury, Inc.
6507 Oakman Hospital Highway
Caldwell, NC 27013
Phone: 704-455-4732
Fax: 704-455-4032
E-Mail: medinfo@carrollcenter.com

Bock & Clark's National Surveyors Network
National Coordinators of ALTA/ACSM Land Title Surveys
537 North Cleveland-Massillon Road Akron, Ohio 44333
Phone: (800) 874-VEYS Fax: (330) 658-3608 www.1800surveys.com





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather L. Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: September 24, 2012
SUBJECT: Proposed Ordinance No. 2012-19 – First Reading
Amending the Land Management Ordinance of the Town of Hilton Head Island's
Official Zoning Map and the Palmetto Dunes Resort Master Plan

There have been no changes made to this agenda item since it was included in the August 7, 2012 packet.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Stephen G. Riley, C.M., *Town Manager*
VIA: Teri Lewis, AICP, *LMO Official*
FROM: Heather Colin, AICP, *Development Review Administrator*
CC: Charles Cousins, AICP, *Director of Community Development*
DATE: June 19, 2012
SUBJECT: Proposed Ordinance No. 2012-19
ZMA120006 – Shelter Cove Mall Redevelopment

Recommendation:

The Planning Commission met on June 8, 2012 to review the attached application for Zoning Map Amendment (ZMA120006) and after a public hearing voted 8-0-0 to recommend that Town Council approve the proposed application for rezoning.

Staff recommended that the application be forwarded Town Council with a recommendation for approval.

Summary:

Don Barnett on behalf of Shelter Cove Towne Center has submitted a request to amend the Palmetto Dunes Master Plan to facilitate the development of a mixed use commercial development that includes general commercial uses, a grocery store with an associated fuel center, multi-family residential dwelling units (apartments), community park space, commercial kiosks and a liquor store to be included as part of the overall Shelter Cove Mall redevelopment.

Specifically the applicant seeks to amend the master plan by decreasing the total commercial density from 314,000 square feet to 295,000 square feet of general commercial uses, of which no more than 1,500 square feet can be used for up to 10 kiosks; and to add 210 multi-family dwelling units (134 units on parcel 12 and 76 units on parcel 26); and to add the uses of Community Park, Liquor Store and Gas Sales.

Background:

When the mall was sold to the present owners, the developers, Blanchard & Calhoun began a dialogue with Town staff on their conceptual plans. Several different plans were drafted and discussed with the intention of drafting the best plan for the developer and the community. During this dialogue the idea of a possible land swap with the Town was discussed in order to provide a better public space, which highlighted the natural and environmental assets of Broad Creek and better integrate the commercial development and the public space. In order to accomplish this, the portion of the current Shelter Cove Community Park between the Veteran's Memorial and the Mall is requested to be assigned 134 multi-family dwelling units. This portion of the property is part of a larger piece that is zoned PD-1 with the designation of Community Park.

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO. 2012-

PROPOSED ORDINANCE NO. 2012-19

AN ORDINANCE TO AMEND TITLE 16, "THE LAND MANAGEMENT ORDINANCE," OF THE MUNICIPAL CODE OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, BY AMENDING SECTION 16-4-102, THE OFFICIAL ZONING MAP AND THE PALMETTO DUNES RESORT MASTER PLAN WITH RESPECT TO THE CERTAIN PARCELS IDENTIFIED AS PARCEL 26, ON BEAUFORT COUNTY TAX MAP #12B, AND A 9.3 ACRE PORTION OF PARCEL 12 ON BEAUFORT COUNTY TAX MAP #12C, WITHIN THE PALMETTO DUNES RESORT MASTER PLAN UNDER THE PD-1 PLANNED DEVELOPMENT MIXED USE DISTRICT, TO AMEND THE USES AND ASSOCIATED DENSITY FOR PARCEL 26, TAX MAP #12B TO 295,000 SQUARE FEET OF COMMERCIAL USES, EXCLUDING USES LISTED IN LMO 16-4-209, BUT PERMITTING LIQUOR STORE AND GAS SALES, COMMUNITY PARK AND 76 MULTI-FAMILY DWELLING UNITS; AND THE PORTION OF PARCEL 12, TAX MAP #12C TO 134 MULTI-FAMILY DWELLING UNITS AND COMMUNITY PARK; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, on May 7, 1986, the Town of Hilton Head Island granted Preliminary Plan Approval to an update of the Palmetto Dunes Resort Master Plan; and

WHEREAS, on July 21, 1998, the Town Council did amend Title 16 of the Municipal Code of the Town of Hilton Head Island by enacting a revised Land Management Ordinance ("LMO"); and

WHEREAS, section 16-4-209 of the LMO incorporates the Palmetto Dunes Resort Master Plan and associated text as a Town-approved master plan under the PD-1 Planned Development Mixed Use District; and

WHEREAS, on December 21, 2010, Town Council approved a resolution to list 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role', as a High Priority Target for Action; and

WHEREAS, on December 20, 2011, Town Council approved a resolution to list 'Shelter Cove Area Redevelopment: Determine Town's Role, and Approve a Plan as a Top Priority Target for Action; and

WHEREAS, on April 20, 2012, Shelter Cove Towne Centre, LLC filed an application to amend the Town's official zoning map and the Palmetto Dunes Master Plan and associated text with respect to that certain 42.45 acre parcel located at 24 Shelter Cove Lane, identified as Parcel 26 on Beaufort County tax map 12B and the 9.3 acre portion of the adjacent Parcel 12 on Beaufort County tax map 12C; and

WHEREAS, the Planning Commission held a public hearing on said zoning map amendment application on June 8, 2012, at which time a presentation was made by staff and an opportunity was given for the public to comment on the rezoning request; and

WHEREAS, the Planning Commission, after consideration of the staff report, public comments, and criteria set forth in Section 16-3-1505 of the LMO, voted 8-0 to recommend to Town Council that the rezoning request be approved; and

WHEREAS, after due consideration of said zoning map amendment application and the recommendation of the Planning Commission, the Town Council, upon further review, finds it is in the public interest to approve the proposed application.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID COUNCIL:

Section 1. Amendment. That the Official Zoning Map of the Town of Hilton Head Island, as referred to in Section 16-4-102 of the LMO, and the Palmetto Dunes Resort Master Plan and associated text, referred to in Section 16-4-209 of the LMO, be hereby amended to modify the use designations and associated density of that certain 42.45 acre parcel identified as Parcel 26 on Beaufort County Tax Map 12B, to 295,000 square feet of commercial uses, excluding uses listed in LMO 16-4-209, but permitting liquor store and gas sales, 76 multi-family dwelling units, and community park; and that certain 9.3 acre portion of the parcel identified as Parcel 12 on Beaufort County Tax Map 12C to 134 multi-family dwelling units and community park. The attached Vicinity Map shows the location of the subject properties.

Section 2. Severability. If any section, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. Effective Date. This Ordinance shall be effective upon its adoption by the Town Council of the Town of Hilton Head Island, South Carolina.

PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND ON THIS _____ DAY OF _____, 2012.

Drew A. Laughlin, Mayor

ATTEST:

Town Clerk

Public Hearing: June 8, 2012
First Reading: August 7, 2012
Second Reading:

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court

Hilton Head Island, SC 29928

843-341-4757

STAFF REPORT ZONING MAP AMENDMENT

Case #:	Name of Project or Development:	Public Hearing Date:
ZMA#120006	The Mall at Shelter Cove	June 8, 2012

Parcel Data or Location:		Applicant/Agent
Parcel 26; Tax Map 12B 42.25 acres	Parcel 12; Tax Map 12C (portion of) Approximately 9.3 acres	
<u>Existing Zoning</u> PD-1; Palmetto Dunes Resort Master Plan Mall at Shelter Cove	<u>Existing Zoning</u> PD-1; Palmetto Dunes Resort Master Plan Community Park	<u>Applicant/Owner</u> Don Barnett Shelter Cove Towne Centre, LLC (Kroger) <u>Agent</u> Mark Senn Blanchard & Calhoun
<u>Existing Density</u> 314,000 square feet, of which 46,000 square feet is limited to cinema complex use	<u>Existing Density</u> 6,000 square feet per net acre of nonresidential density	
<u>Proposed Zoning</u> PD-1; Palmetto Dunes Resort Master Plan with land use designations of Multi Family Residential, Community Park and Commercial, excluding uses restricted by LMO 16-4-209, but permitting Liquor Stores and Gas Sales	<u>Proposed Zoning District</u> PD-1; Palmetto Dunes Resort Master Plan with a land use designation of Multi Family Residential and Community Park.	
<u>Proposed Density</u> 295,000 square feet of commercial density and 76 Multi- family dwelling units	<u>Proposed Density</u> 134 Multi-family dwelling units	
<u>Applicable Overlay District</u> Corridor Overlay	<u>Applicable Overlay District</u> Corridor Overlay	

Application Summary:

Don Barnett on behalf of Shelter Cove Towne Center has submitted a request to amend the Palmetto Dunes Master Plan to facilitate the development of a mixed use commercial development that includes general commercial uses, a grocery store with an associated fuel center, multi-family residential dwelling units (apartments), community park space, commercial kiosks and a liquor store to be included as part of the overall Shelter Cove Mall redevelopment.

Specifically the applicant seeks to amend the master plan by decreasing the total commercial density from 314,000 square feet (of which 46,000 square feet shall be limited to cinema complex and 268,000 square feet for 'Mall at Shelter Cove' and Community Service uses) to **295,000 square feet of general commercial uses, of which no more than 1,500 square feet can be used for up to 10 kiosks; and to add 210 multi-family dwelling units (134 units on parcel 12 and 76 units on parcel 26); and to add the uses of Community Park, Liquor Store and Gas Sales.**

Staff Recommendation:

Staff recommends that the Planning Commission find this application to be consistent with the Town's Comprehensive Plan and serves to carry out the purposes of the LMO, based on those Findings of Facts and Conclusions of Law as determined by the LMO Official and enclosed herein; making the recommendation to Town Council of **APPROVAL** of the request.

Other Commission or Committee Recommendations:

- As a result of the discussions at the Town Council workshop on December 9-11, 2010, 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role', was approved by resolution of Town Council on **December 21, 2010** as a High Priority Target for Action.
- Town Council discussed it again at their annual 2011 workshop, December 1-3, which resulted in it being approved through a resolution on **December 20, 2011** as a Top Priority Target for Action as part of the 'Shelter Cove Area Redevelopment: Determine Town's Role, and Approve a Plan.
- On **November 16, 2011** Mark Senn from Blanchard & Calhoun made a presentation on the conceptual redevelopment plans for the Mall to the Planning Commission who stated their support for the direction of the project.
- On **May 31, 2012**, Town Council held an informational meeting.

Background:

The master plan for Palmetto Dunes Resort was initially approved by Beaufort County in 1975 and was subsequently approved by the Town when Hilton Head Island incorporated in 1983. This plan did not assign site specific densities; but rather, the amount of commercial square footage and/or acreage that could be developed within the entire master plan was limited to 750,000 square feet or 110 acres.

In 1986, the plan was amended to assign the density to specific parcels and the Mall site was assigned **235,000** square feet and the Mall out-parcels were assigned **16,000** square feet; the common space in the mall (hallways, etc) was determined by the Planning Commission to not count toward the assigned density. A total of **251,000** square feet for the total area.

In 1992, an Order of Settlement related to a court case transferred 12,300 square feet from Outparcels I and II, and Parcel C to the larger Mall parcel (**247,300** total square feet) and restricted Outparcel II and Parcel C to no vertical construction. Outparcel II, retained **3,700** square feet of commercial density. Still retaining a total of **251,000** square feet of commercial density for the entire site.

In 1998, a rezoning was approved that transferred **23,000** square feet of density from elsewhere in the PUD and required that all of the parcels (Outparcels I, II, and Parcel C) be combined to one. This resulted in a total of **274,000** square feet of commercial density (**247,300** sq ft + **3,700** sq ft + **23,000** sq ft)

On July 7, 2009, Town Council approved the request to amend the master plan for the Mall (adding **40,000** sq ft) property for a total of **314,000** square feet of commercial uses, of which **46,000** square feet was to be designated particularly for cinema complex use and to allow community service uses in addition to commercial uses except as limited in LMO 16-4-209. This is the current zoning and master plan designation for the property.

When the mall was sold to the present owners, the developers, Blanchard & Calhoun began a dialogue with Town staff on their conceptual plans. Several different plans were drafted and discussed with the intention of drafting the best plan for the developer and the community. During this dialogue the idea of a possible land swap with the Town was discussed in order to provide a better public space, which highlighted the natural and environmental assets of Broad Creek and better integrated the commercial development and the public space. In order to accomplish this, the portion of the current Shelter Cove Community Park between the Veteran's Memorial and the Mall is requested to be assigned 134 multi-family dwelling units. This portion of the property is part of a larger piece that is zoned PD-1 with the designation of Community Park.

In January 2004, through an administrative rezoning, the existing Shelter Cove Community Park was approved as Community Park with 6,000 square feet per net acre to be consistent with the PR district regulations as specified in LMO 16-4-1601 from the previous designation of 257 dwelling units. A portion of this property as shown in the attachments is proposed to be amended to include a designation of 134 multi-family dwelling units (apartments).

Applicant's Grounds for ZMA, Summary of Facts and Conclusions of Law:

The applicant's narrative and application materials describe the planned developments and this particular property as being appropriate for a mix of uses. This application proposes just that, a mix of commercial uses, park and multi-family residential. They state that the original plans for the district and the Mall Parcel, designate the back portion of the property for 180 multi-family units.

The applicant states that this development will revitalize the mall by opening up views to the marsh, provide the community with apartments which are currently in a limited supply on the island, that would have views to the marsh and take advantage of the mixed use concept of close proximity to commercial and public open space. The mall will be redeveloped to an open air series of retail shops, offices, and multi-family dwelling units. The addition of a public park will create a significant, flexible, functional and usable open space which will provide a sense of place for the community.

Summary of Facts and Conclusions of Law:

Findings of Facts.

- Notice of the Application was published in the Island Packet on May 6, 2012 as set forth in LMO 16-3-110 and 16-3-111.
- Notice of the Application was posted and mailed as set forth in LMO 16-3-110 and 16-3-111.
- A letter was mailed soliciting comments from the property owners' association as set forth in LMO 16-3-1502.
- A public hearing will be held on June 8, 2012 as set forth in LMO 16-3-1504A.
- The Commission has authority to render their decision reached here in LMO 16-3-1504.

Conclusions of Law:

The application, notice requirements, and public hearing comply with the legal requirements as set forth in LMO 16-3-110, 16-3-111 and 16-3-1504.

As set forth in Section 16-3-1505, Zoning Map Amendment Review Criteria, the Commission shall consider and make findings on the following matters regarding the proposed amendment.

Summary of Facts and Conclusions of Law:

Criteria 1: Consistency (or lack thereof) with the Comprehensive Plan (LMO 16-3-1505A):

Findings of Facts.

The adopted Comprehensive Plan addresses this project in the following areas:

Natural Resources Element

Implications for the Comprehensive Plan 3.3 - Positive Impacts of Environmental Preservation on quality of life.

The preservation of natural resources includes thoughtful planning techniques and sustainable land-use practices. The Town needs to maintain healthy beaches and creeks, invest in well-planned green space and protect mature tree canopies in order to enhance and support mental and physical health, economic vitality and a high quality of life.

Goal 3.1 - Water Quality and Quantity

- B. The goal is to preserve all blueways (which includes salt marsh, freshwater wetlands, open canals, ditches and open water systems).

Housing Element

Implications for the Comprehensive Plan 5.1 – Housing Units and Tenure

Although, an increase in the total number of housing units contributes to the economic tax base for the Town, it is important that both the quantity as well as quality of the housing stock is maintained to sustain current and future population and overall property values. As the amount of available land declines for new development, it will be very important to maintain a high quality housing stock on residential properties. In addition, the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island's population.

Community Facilities Element

Implications for the Comprehensive 6.3 – Transportation Network

While the Island currently has an extensive pathway network, opportunities to improve pathway connections between destinations that provide additional recreational opportunities and promote alternative means of transportation on the Island should be considered.

Implications for the Comprehensive 6.4 – Town Acquired Property

As the number of Town-owned properties continues to increase careful consideration of future utility is important to long range planning efforts.

Goal 6.1 – Build-out

- A. The goal is to provide innovative and visionary initiatives that mitigate challenges of growth and redevelopment while making available higher levels of service for community facilities in a fiscally responsible manner.

Goal 6.3 – Transportation Network

- A. The goal is to provide a transportation network that includes opportunities for roadway, pathway, water-based and air-based transportation to and on the Island.
D. The goal is to have a pathway network that provides for recreational opportunities as well as an alternative means of transportation to and on the Island.

Goal 6.4 – Town Acquired Property

- B. The goal is to assess the utility and character of Town acquired property.

Implementation Strategy 6.3 – Transportation Network

- C. Continue to expand the Island's pathway network.

Economic Development Element

Potential Strategies with Implications for the Comprehensive Plan

Identify and prioritize areas in need of re-development including any obsolete, or run down, commercial buildings. Incentivize the development of flexibility of streamlining in regulation of density caps, setbacks (and other controls) that enable a qualitative, principle based, asset revitalization that enhance the Island's positive legacies.

Land Use Element

Implications for the Comprehensive 8.2 – Town Acquired Property

Building permit data is indicative of several factors, one being the state of the economy as well as current building needs and growth in both residential and commercial types. The data indicates that there is currently a downward trend in the number of building permits issued by the Town. Redevelopment of our existing built environment and infill development should be a focus for the future development of our community, while the Town has entered a more mature level of development.

Goal 8.11 – Land Use Goals and Implementation Strategies

4. Promote quality infill development and use redevelopment opportunities to promote more pedestrian friendly retail environments.

Goal 8.1 – Existing Land Use

- A. The goal is to have an appropriate mix of land uses to meet the needs of existing and future populations.

Goal 8.3 – Planned Unit Developments (PUD's)

- B. The goal is to have an appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending PUD Master Plans.

Goal 8.4 – Existing Zoning Allocation

- A. An appropriate mix of land uses to accommodate permanent and seasonal populations and existing market demands is important to sustain the Town's high quality of life and should be considered when amending the Town's Official Zoning Map.

Goal 8.5 – Land Use Per Capita

- A. The goal is to have an appropriate mix and availability of land uses to meet the needs of existing and future populations.

Goal 8.9 – Age of Structures

- B. The goal is to encourage redevelopment of properties with aging structures or that no longer meet current market demands.

Goal 8.10 – Zoning Changes

- A. The goal is to provide appropriate modifications to the zoning designations to meet market demands while maintaining the character of the Island.

Goal 8.6 – Build-out

- A. The goal is to monitor land use consumption and conversion rates to maintain a proper balance of public infrastructure, private development, and land conservation.
- B. The goal is to consider develop regulations and requirements to maintain the Island character and meet the needs of the community as it approaches build out.

Goal 8.10 - Zoning Changes

- A. The goal is to provide appropriate modifications to the Zoning designations to meet

market demands while maintaining the character of the Island.

Implementation Strategy 8.3 - Planned Unit Developments (PUDs)

- A. Consider flexibility within the PUDs to address appropriate commercial or service land uses in areas with a high residential concentration.

Implementation Strategy 8.9 - Age of Structures

- B. Develop flexible regulations and incentives to encourage redevelopment of aging structures and districts.

Implementation Strategy 8.10 - Zoning Changes

- B. Consider focusing higher intensity land uses in areas with available sewer connections.

Transportation Element

Implications for the Comprehensive 9.3 - Traffic Planning on the Island

Future development and zoning classifications have an impact on the potential build-out of properties on the Island. Increasing the density of properties in certain areas of the Town may not be appropriate due to the inability of the current transportation network to handle the resulting additional traffic volumes. It may be more appropriate to provide density in areas that have the available roadway capacity and to reduce densities or development potential in areas that do not have the appropriate roadway capacity...

Implications for the Comprehensive 9.4 - Pathway Network

While the Island currently has an extensive pathway network, opportunities to improve pathway connections between destinations that provide additional recreational opportunities and promote alternative means of transportation on the Island should be considered.

Implications for the Comprehensive 9.4 - Pathway Network

There may be potential benefits of linking private community pathways to destinations such as shopping and entertainment centers immediately adjacent to the PUDs via pathway connections or secondary access points. This could have the potential to reduce the number of automobile trips on Island roadways, reduce the parking area required to accommodate customers and integrate the PUDs and non PUD areas.

Goal 9.4 - Multi-Use Pathways

- A. The goal is to expand the pathway network to provide pedestrians, bicyclists, and other users of non-motorized transit with a safe and efficient infrastructure to connect residential and tourist areas to schools, parks, commercial areas, and potential off-Island connections.

Implementation Strategy 9.4 - Multi-Use Pathways

- A. Expand the Island's Multi-Use Pathway System to connect all appropriate land uses such as parks, schools, open spaces, and beach access facilities on the Island along with residential and commercial destinations:
 - ii. Identify areas for sidewalk or multi-use pathway locations which have significant commercial, recreational, resort, entertainment or other intense public use but do not have adequate pedestrian or bicycle access.

Recreation Element

Implications for the Comprehensive 10.5 – Inventory of Existing Facilities

All organizations and groups, including the Town, School District and private communities and developers should work together when developing park and recreation plans.

Goal 10.1 - Recreation Needs

- A. Continue to expand the public recreation system by providing adequate facilities to meet the needs of a broad spectrum of the Island population (including visitors) while maintaining sensitivity to the specific needs of the Island.

Goal 10.4 - Pathways

- A. Continue improving and expanding the existing network of multi-use pathways throughout the Island enabling residents and visitors to access recreational areas, shopping centers, schools and businesses by non-motorized forms of transportation.

Goal 10.2 Protection of Unique Features

- A. Acquire conservation and park lands as a means to preserve natural and cultural resources for educational, interpretive, and passive recreation uses.

Implementation Strategy 10.1 – Recreation Needs

- D. Include within the park system a combination of all park types and strive to achieve the park guidelines as stated in this element by providing the number of future parks needed based on population projections.

Implementation Strategy 10.2 – Protection of Unique Features

- B. Acquire properties located in areas of need for both passive and active uses, and for access points to waterways.

Conclusions:

Staff concludes that this application is consistent with the Comprehensive Plan, as described in the Natural Resources, Housing, Economic Development, Land Use, Transportation and Recreation Elements as set forth in LMO Section 16-3-1505A below.

- This rezoning will approve the land uses needed to relocate a portion of the Town's Shelter Cove Park, , which will result in longer frontage along Broad Creek and a reduction in the amount of impervious surface adjacent to the waterway, which will help improve water quality through the filtration of pollutants before they enter Broad Creek.
- The proposed rezoning promotes the redevelopment of an existing site in an area where the infrastructure is adequate and reduces the potential for additional impacts on infrastructure in other areas of the Island.
- The approval of this rezoning will help to remove underperforming commercial space from the Island's market and help facilitate the redevelopment of the Mall into a pedestrian friendly mixed-use environment, which better meets market demands and encourages alternate forms of transportation.

- This rezoning contributes to a more diverse supply of high quality housing options on the Island by allowing the development of residential uses, which will result in the addition of long term rental units to the market that are currently very limited in number, but growing in demand.
- The approval of this rezoning will facilitate the expansion of the Island's pathway system as part of the relocation of Shelter Cove Park , which will better link other neighboring residential and commercial areas to the development and provide additional recreation opportunities for Island residents and visitors.
- This rezoning takes into the consideration the special utility of Town-owned property by using a portion of the existing Shelter Cove Park property in a public/private partnership for the redevelopment of the Mall into a new mixed use development with an improved public waterfront park more centrally located and integrated into the development. This will result in increased frontage along Broad Creek in the park and improved public access to the Island's largest tidal creek, making available higher levels of service for public open space in a fiscally responsible manner.
- This rezoning will enable a qualitative, principle based, asset revitalization that enhances the Island's positive legacies by allowing the redevelopment of one of the Island's largest failing commercial centers and the Island's only indoor mall in a way that is designed to take better advantage of the natural beauty and views of Broad Creek and provide a more pedestrian oriented mixed use environment that will improve the character of the Island.
- The proposed rezoning provides the flexibility that is needed in the regulation of land use within the PD-1 District to allow for the designation of an appropriate mix of land uses in the appropriate locations to meet the needs of the population and improve the quality of life on the Island.
- The proposed rezoning will help promote redevelopment of the Mall, an aging structure that no longer meet current market demands.

Summary of Facts and Conclusions of Law:

Criteria 2: Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood (LMO16-3-1505B):

Findings of Facts.

- The present zoning of adjacent properties is PD-1, Palmetto Dunes Master Plan with a mix of land use designations including commercial, community park, office/commercial, and multi-family residential.
- According to LMO 16-4-209 'The purpose of this Planned Development Mixed Use District is to recognize the existence within the Town of certain unique mixed use Planned Unit Developments (PUDs) which are greater than 250 acres in size. Generally, these PUDs have served to establish the special character of Hilton Head Island as a quality resort and residential community and it is the intent in

establishing this District to allow the continuation of well-planned development within these areas.’

- The subject property and properties in the vicinity are within the COR District, Corridor Overlay District.
- According to LMO 16-4-501 ‘The purpose of establishing this overlay district is to protect the aesthetic and visual character of lands on Hilton Head Island adjacent to the major roads, the waterfront, and the marsh front, as defined herein. ... In particular, the purpose of the Corridor Overlay District is to encourage and better articulate positive visual experiences along the Island’s major roads, the waterfront, and the marsh front; to provide for the continued safe and efficient utilization of these roads; and to provide for the continued preservation and conservation of the waterfront and marsh front. This will be accomplished through evaluation of proposed developments within this district by a Design Review Board...’

Conclusions of Law:

- Staff concludes that the present zoning and conforming uses of nearby property are compatible with the character of the neighborhood as set forth in LMO 16-3-1505B because they are a mix of uses as stated in the purpose statement of the PD-1 zoning district.
- The DRB reviews all development in the vicinity of the property according to the Design Guidelines for Hilton Head Island to ensure the compatibility of the developments with the character of the neighborhood.

Summary of Facts and Conclusions of Law:

Criteria 3: Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment (LMO 16-3-1505C):

Findings of Facts.

- The PD-1 zoning district allows for a mix of uses as designated specifically on the associated Master Plans.
- The proposed uses that would be designated on the master plan for the larger parcel include a gas station, kiosks, and a liquor store as well as general commercial uses. Apartments would also be a permitted use on the property. Community Park would also be a permitted use on both parcels.
- There are existing public park spaces in close proximity, the Shelter Cove Community Park and the Veteran’s Memorial Park.
- The existing portion of the Town owned property would be designated for 134 multi-family dwelling units and community park.

Conclusions of Law:

- The proposed commercial uses are the same type of commercial uses that are characteristic of the area. The property is also suitable for apartments and residential uses due to the proximity to other residential uses in the area and immediately adjacent to the property.
- The property is suitable for park space because it is a good compliment to the other uses to provide the mix of uses that is desired and is a complimentary use Broad Creek.

Summary of Facts and Conclusions of Law:

Criteria 4: Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO 16-3-1505D):

Findings of Facts.

- The existing uses for this property are very specific and limited to various factors that were established as conditions of previous rezonings and restrictive covenants that were entered into between the Town and property owner. The only uses permitted on the parcels are commercial and community park.
- The two properties (Mall parcel and the portion of the Town owned parcel) in total size are greater than 50 acres in size and are bound by Broad Creek to the rear, William Hilton Parkway to the front, and residential, commercial and public park space.

Conclusion of Law:

- A mix of all neighboring uses is appropriate for the site and is compatible with the surrounding uses, since this development will encompass a mix of commercial, residential and public open space.

Summary of Facts and Conclusions of Law:

Criteria 5: Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment (LMO 16-3-1505E):

Findings of Facts.

- No uses that are currently allowed on the property are proposed to be removed.
- A combination of statements made at other public meetings and other marketing and development research, supports that closed air malls are no longer the trend and people generally prefer an open air shopping and more life center experience.
- Many tenants have left Shelter Cove Mall to other open air commercial space, demonstrating the change in trends from enclosed malls to open air plazas and centers.

Conclusion of Law:

- The approval of this request would increase the marketability of the property with the additional uses as well as the associated density assigned to each. The redevelopment of property will also affect the marketability, in what is expected to be a positive direction.

Summary of Facts and Conclusions of Law:

Criteria 6: Availability of sewer, water and stormwater facilities generally suitable and adequate for the proposed use (LMO 16-3-1505F):

Findings of Facts.

- The property is within the Broad Creek Public Service District which currently serves the development.
- Storm water facilities are in place for the existing Mall as well as the Park.

Conclusions of Law:

- Staff concludes that this property has available sewer and water facilities suitable and adequate for the proposed uses as set forth in LMO Chapter 3, Article III.
- The adequacies of the storm water facilities and all other infrastructure will be reviewed as part of the DPR (Development Plan Review) and will be installed to comply with the LMO, Chapter 5, Article VI.

Summary of Facts and Conclusions of Law:

Other documents or actions address this project:

Findings of Facts.

- To determine compatibility with the Southern Regional Plan Implementation Committee, comments were solicited to other Planning Directors and Town/County Administrators as well as the County School District as to the regional impacts of this proposed application. No negative responses or letters of concern were received.
- The Policy Agenda for 2011, Targets for Action as adopted by Town Council list 'Shelter Cove Mall Redevelopment: Conceptual Plan Direction and Town's Role'.
- The Policy Agenda for 2012, Targets for Action as adopted by Town Council list 'Shelter Cove Area Redevelopment: Determine Town's Role and Develop and Approve a Plan'.

Conclusions:

- Staff concludes that the project will not have a negative impact on the region based on the input from other jurisdictions in Southern Beaufort County.
- This is the first step in approving a redevelopment plan for the Mall site based on Town Council's goals resulting from their annual workshop.

LMO Official Determination

Determination: Staff determines that this application is compatible with the Comprehensive Plan and serves to carry out the purposes of the LMO as based on the following Findings of Fact and Conclusions of Law.

Staff recommends that the Planning Commission **recommend approval** to Town Council of this application, which includes amending the Official Zoning Map by amending the Palmetto Dunes Resort Master Plan for the Mall parcel, indicated as 'Portion 1' to "Commercial, excluding uses restricted by LMO 16-4-209, but permitting Liquor Stores and Gas Sales", "Multifamily" and "Community Park" with an allocated 295,000 square feet of commercial density (with no more than 1,500 square feet used for 10 kiosks) and 76 multi-family residential units.

Town staff further recommends that 'Portion 2', the existing Town owned portion, be amended to Multifamily and Community Park with an allocated 134 residential units.

Note: If the proposed amendment is approved by Town Council, such action shall be by ordinance to amend the Official Zoning Map. If it is denied by Town Council, such action shall be by resolution.

PREPARED BY:

HLC

Heather L. Colin, AICP
Development Review Administrator

May 23, 2012

DATE

REVIEWED BY:

TBL

Teri B. Lewis, AICP
LMO Official

May 29, 2012

DATE

REVIEWED BY:

JL

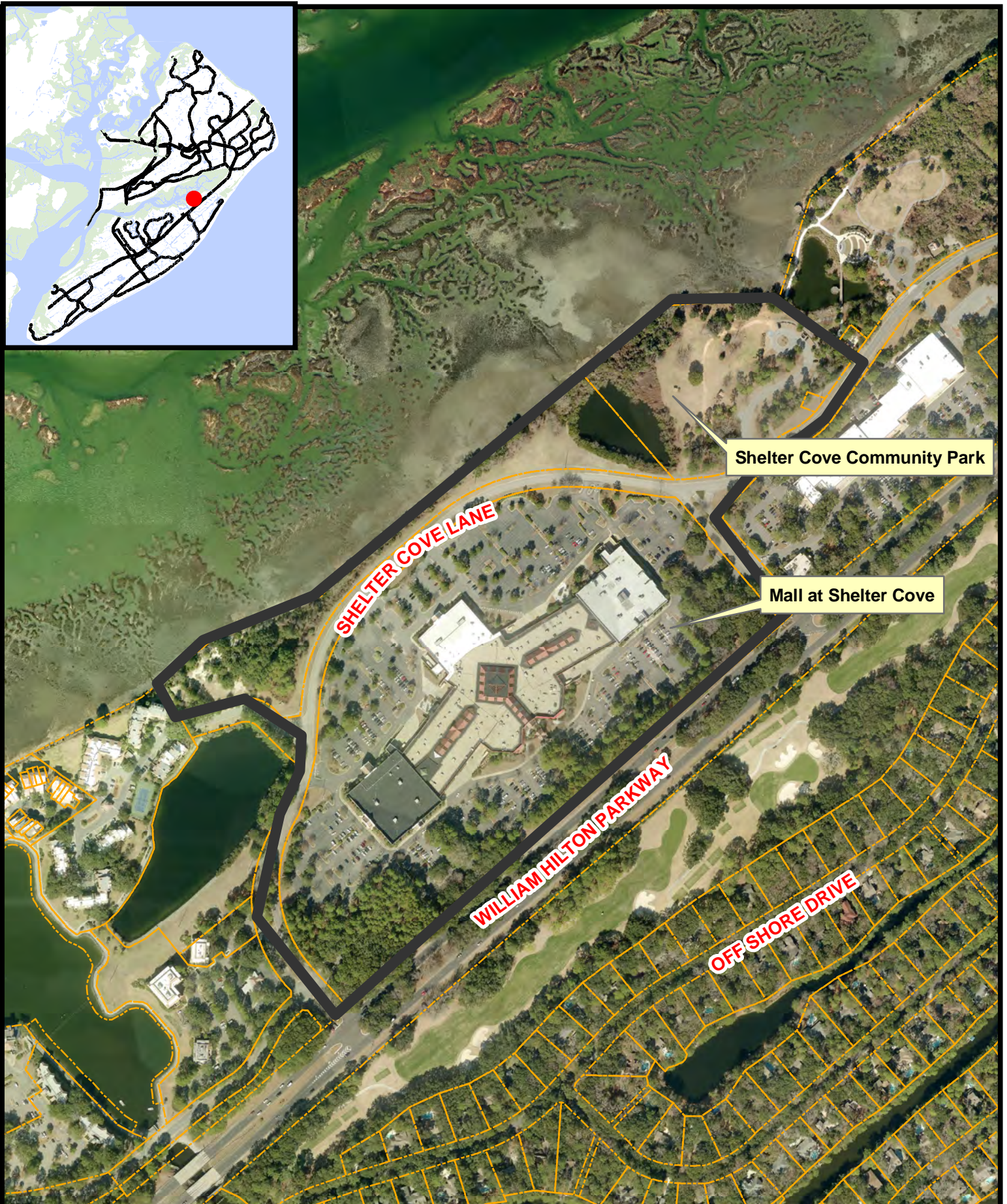
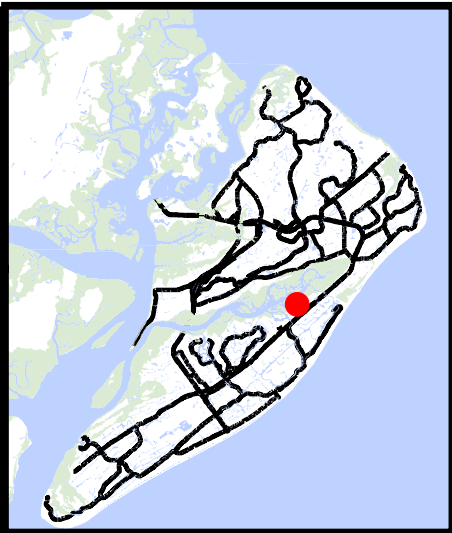
Jayme Lopko, AICP
*Senior Planner & Planning Commission Board
Coordinator*

May 29, 2012

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative and Attachments



Shelter Cove Community Park

Mall at Shelter Cove

SHELTER COVE LANE

WILLIAM HILTON PARKWAY

OFF SHORE DRIVE



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341-6000

Town of Hilton Head Island
ZMA120006 - Vicinity Map



450 225 0 450 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, AICP, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance

DATE: September 26, 2012

RE: Reimbursement Resolution for Land Acquisition for Park Development

Recommendation: Staff recommends that Council adopt a resolution authorizing the Town to make payments related to the land acquisition for park development from existing ad valorem tax revenues or other funds on hand with the intent to reimburse these funds from the proceeds of tax-exempt General Obligation debt.

Summary: The Council's agenda includes a development agreement related to the Shelter Cove Mall. A significant component of the development agreement is a land swap and related park development on the land. Although the exchange of title to the lands, the construction of the park, and the reimbursement of the Town's portion will occur over the course of a couple of years, the development agreement from a financial perspective commits or encumbers the funds. As a separate agenda item, Council will consider a budget ordinance to amend the budget thereby allowing a commitment of funds for this project. Because the proposed source of funding for this project is general obligation bonds which will be issued at a later date, it is also necessary to adopt a reimbursement resolution which is the purpose of this agenda item.

Background: This reimbursement resolution amends two prior reimbursement resolutions bringing the cumulative amount to a not to exceed \$6.2 million amount as follows:

1. Resolution 2012-09 adopted April 3, 2012 not to exceed \$1.2 million for sewer projects.
2. Resolution 2012-14 adopted May 1, 2012 not to exceed \$2.5 million for the purchase of land, building and renovations for 58 Shelter Cove to be used for the Sheriff's Office and Share Center or other purposes determined by the Town.
3. The proposed item for approval at this meeting is not to exceed \$2.5 million for land acquisition for park development and other associated costs. Per the development agreement section V.D.(ii), "*...the Town and SCTC will develop and jointly approve a Cost Estimate ... In the event the Cost Estimate exceeds \$4.5 Million Dollars, SCTC and the Town will work together to make such changes as are necessary to meet the \$4.5 Million Dollars maximum Cost Estimate unless otherwise agreed by the Town and SCTC...*" and section V.D.(viii), "*The purchase price to be paid by the Town to SCTC for the Community Park will be equal to one-half of the construction cost plus the exchange of the Exchange Parcel...*"

A RESOLUTION TO AMEND RESOLUTION NO. 2012-14 RELATING TO THE DECLARATION OF INTENT BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, TO REIMBURSE CERTAIN EXPENDITURES PRIOR TO THE ISSUANCE BY THE TOWN OF ITS TAX-EXEMPT DEBT.

WHEREAS, on April 3, 2012, the Town Council adopted Resolution No. 2012-09 relating to its declaration of intent to reimburse itself for expenditures (“Expenditures”) with respect to the purchase of land and the building thereon to be used by the Beaufort County Sheriff’s Office in providing law enforcement services in the Town or for other purposes as may be determined by the Town Council and all costs associated therewith including renovations from said uses (the “Initial Projects”) prior to the issuance of debt financing for such Initial Projects; and

WHEREAS, on May 1, 2012, the Town Council adopted Resolution No. 2012-14 relating to its declaration of intent to reimburse itself for renovations for Expenditures with respect to various sewer projects in the Town and all costs associated therewith (the “Sewer Projects”) prior to the issuance by the Town of tax-exempt debt for such purpose; and

WHEREAS, the Town Council would like to amend Resolution No. 2012-14 to declare its intent to reimburse itself for renovations for Expenditures with respect to the acquisition of land to be used for development of a park (the “Park Projects,” together with the Initial Projects and the Sewer Projects, the “Projects”) prior to the issuance by the Town of tax-exempt debt for such purpose; and

WHEREAS, the Town intends to fund the Projects from proceeds of tax-exempt debt not to exceed \$6,200,000; and

WHEREAS, the Regulations require that the governing body of the political subdivision declare an official intent to reimburse an expenditure prior to the incurrence of the expenditure.

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, as follows:

Section 1. The Council hereby amends Resolution No. 2012-14 amending Resolution No. 2012-09 to include the Park Projects.

Section 2. The Council hereby declares that this Resolution shall constitute its declaration of official intent pursuant to Regulation § 1.150-2 to reimburse the Town from the proceeds of debt financing to be issued pursuant to South Carolina state law, for Expenditures with respect to the Projects. The Council anticipates incurring Expenditures with respect to the Projects prior to the issuance by the Town of debt financing for such purposes.

Section 3. To be eligible for reimbursement of the Expenditures, the reimbursement allocation must be made not later than 18 months after the later of (a) the date on which the Expenditures were paid, or (b) the date the Projects was placed in service, but in no event more than three (3) years after the original Expenditures.

Section 4. The Expenditures are incurred solely to acquire, construct or rehabilitate property having a reasonably expected economic life of at least one (1) year.

Section 5. The Council hereby authorizes the use of ad valorem tax revenues or other funds on hand as the source of funds for the Expenditures with respect to the Projects.

Section 6. This Resolution shall be in full force and effect from and after its adoption as provided by law. This Resolution shall be made available for inspection during normal business hours by the general public at the offices of the Town.

MOVED, APPROVED, AND ADOPTED ON THIS ____ DAY OF _____, 2012.

By: _____
Drew A. Laughlin, Mayor

Attest:

Victoria L. Pfannenschmidt, Acting Town Clerk

Approved as to form:

Gregory M. Alford, Town Attorney

Introduced by Council Member: _____



MEMORANDUM

TO: Town Council

FROM: Stephen G. Riley, ICMA-CM, Town Manager

VIA: Susan M. Simmons, CPA, Director of Finance
S

DATE: September 26, 2012

RE: **First Reading of Proposed Ordinance No. 2012-34**

Recommendation: Staff recommends Council approve first reading of Proposed Ordinance No. 2012-34 amending the fiscal year 2013 Capital Projects Fund budget to include the project, Shelter Cove Land Acquisition and Park Development at a budget of \$2.5 million with general obligation bonds as the source of funds.

Summary: The Council's agenda includes a development agreement related to the Shelter Cove Mall. A significant component of the development agreement is a land swap and related park development on the land. Although the exchange of title to the lands, the construction of the park, and the reimbursement of the Town's portion will occur over the course of a couple of years, the development agreement from a financial perspective commits or encumbers the funds. To allow for the commitment of funds for this project, Council should adopt an ordinance to amend the budget to include the project.

The proposed source of funding for this project is general obligation bonds which will be issued at a later date. As a separate agenda item, Council should adopt a reimbursement resolution authorizing the Town to make payments related to the land acquisition for park development from existing ad valorem tax revenues or other funds on hand with the intent to reimburse these funds from the proceeds of tax-exempt General Obligation debt.

Background: The proposed budget amendment is \$2.5 million for land acquisition for park development and other associated costs. Per the development agreement section V.D.(ii), "*...the Town and SCTC will develop and jointly approve a Cost Estimate ... In the event the Cost Estimate exceeds \$4.5 Million Dollars, SCTC and the Town will work together to make such changes as are necessary to meet the \$4.5 Million Dollars maximum Cost Estimate unless otherwise agreed by the Town and SCTC...*" and section V.D.(viii), "*The purchase price to be paid by the Town to SCTC for the Community Park will be equal to one-half of the construction cost plus the exchange of the Exchange Parcel...*"

AN ORDINANCE OF THE TOWN OF HILTON HEAD ISLAND

ORDINANCE NO.

PROPOSED ORDINANCE NO. 2012-34

AN ORDINANCE TO AMEND THE BUDGET FOR THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA, FOR THE FISCAL YEAR ENDING JUNE 30, 2013; TO PROVIDE FOR THE EXPENDITURES OF CERTAIN FUNDS; AND TO ALLOCATE THE SOURCES OF REVENUE FOR THE SAID FUNDS.

WHEREAS, Section 5-7-260 of the Code of Laws of South Carolina requires that a municipal council act by ordinance to adopt a budget and levy taxes, pursuant to public notice; and

WHEREAS, the Town Council did adopt the budget on June 19, 2012, and

WHEREAS, pursuant to the budget amendment policy as stated in the Town's annual budget document, the Town Council is desirous of amending the budget so as to provide for the expenditures and revenue sources for certain capital projects in the Capital Project Fund.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA; AND IT IS ORDAINED BY THE AUTHORITY OF THE SAID TOWN COUNCIL:

Section 1 Amendment. The adopted 2013 fiscal year budget is amended to make the following changes as increases and decreases to the funds from prior years and to the projected revenue and expenditure accounts as follows:

Capital Projects Fund

<u>Account Description</u>	<u>Source of Funds</u>	<u>Amount</u>
Revenues:		
GO Bond		\$ 2,500,000
Total Revenues		\$ 2,500,000
Expenditures:		
Park Development		
Shelter Cove Land Acquisition and Park Development	GO Bond	\$ 2,500,000
Total Expenditures		\$ 2,500,000

The effect of this amendment will be to increase the Capital Projects Fund budget to \$15,366,500.

Section 2 Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon its enactment by the Town Council of the Town of Hilton Head Island on this _____ day of _____, 2012.

**PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF
HILTON HEAD ISLAND ON THIS ____ DAY OF _____, 2012.**

Drew A. Laughlin, Mayor

ATTEST:

Victoria L. Pfannenschmidt, Acting Town Clerk

First Reading: _____
Second Reading: _____

APPROVED AS TO FORM:

Gregory M. Alford, Town Attorney

Introduced by Council Member:

MEMORANDUM

TO: Town Council
VIA: Stephen G. Riley, ICMA-CM, *Town Manager*
FROM: Nancy Gasen, SPHR, CCP/CBP, *Director of Human Resources*
DATE: October 2, 2012
SUBJECT: Review of Town Council Compensation (Salary & Benefits)

Recommendation: Based on a review of current salary and benefits earned by mayors and Council members in the top 25 SC municipalities (based on population), it is recommended that Town Council consider whether an adjustment in the compensation currently earned by its members is warranted. If a decision is made that Hilton Head Island's Mayor and Council members should receive additional compensation, it is recommended that any increase be addressed in the form of a salary increase (due to benefit plan limitations described below):

Summary: Findings obtained from information sources described in the "Background" section below include the following:

- **Mayor & Council Salaries** (See attached report for salary comparison)
 - (1) Hilton Head Island ranks 7th in population among the top 23 SC municipalities with a similar form of government
 - (2) The Mayor's salary ranks 18th compared to mayors in the same group of 23
 - (3) Council salaries rank 13th compared to council member salaries in the same group
- **Mayor & Council Benefits** (See attached report for health & retirement plan comparison)
 - (1) Council members do not receive health or retirement plan benefits from the Town. Unlike elected officials in other municipalities, Council members are not eligible to participate in the SC retirement system (SCRS) because Town employees do not participate in SCRS. Because Council does not participate in SCRS, members are not eligible to participate in the State Health Plan.
 - (2) Elected officials from 19 of the top 23 similarly governed SC municipalities are eligible for participation in SCRS
 - (3) Elected officials from 19 of the same 23 municipalities are eligible for participation in the State Health Plan and commonly receive employer-subsidized benefits.

If Council decides to adjust its overall compensation to be more in line with other similarly sized and governed SC municipalities, several factors should be considered:

- An approach in determining an appropriate salary increase for the Mayor and Council members might be to use the average of salaries paid by the top 13 similarly governed municipalities (excluding Hilton Head Island). See attached report for illustration.

- Since Town Council members cannot participate in the State Health Plan, consideration could be given to increasing their salaries by the amount other municipalities typically pay to subsidize individual elected official health/dental coverage (est. 1/1/13 cost of \$412/mo). Members could use increased salary, if desired, to address individual health insurance needs. Both the Town's benefit attorney and a local insurance broker favor this approach in lieu of trying to identify/implement Council group coverage due to the challenges of small group size, varied participant needs, potential membership changes during election years, and the evolving impact of healthcare reform. See attached report for illustration.
- Since Council members cannot participate in the State retirement program, consideration could be given to increasing their salaries by the amount other municipalities contribute for elected officials to participate in SCRS (currently 10.45% of salary). Town Council members could then choose to address individual retirement needs by contributing any portion of their salary to the Town's Traditional and/or Roth 457 Plan. Maximum contributions to this plan would be limited to the lesser of the annual IRS contribution limit or (2) 100% of a Council members' gross compensation. See attached report for illustration.

Background: During its midyear strategic planning session on May 30, Council directed staff to obtain information related to the salary and benefits currently received by other SC municipal elected officials. Town Council salaries were last adjusted in October of 1996. The information above and shown in the attached summary was obtained from the Municipal Association of SC, a survey of SC municipalities, health and retirement plan providers, and the Town's benefit attorney.

Council Compensation & Benefits

SC Municipalities by Population - Top 25

City/Town	Population		Mayor		Council		Health Benefits	Retirement Plan
	Number	Rank	Salary	Rank	Salary	Rank		
Strong Mayor								
Charleston	120,083	1	\$162,816.00	1	\$15,000.00	2	Yes	Yes
North Charleston	97,471	2	\$148,905.00	2	\$15,965.00	1	Yes	Yes
Manager/Administrator								
Columbia	129,272	1	\$17,500.00	6	\$13,500.00	3	Yes	Yes
Mount Pleasant	67,843	2	\$24,000.00	2	\$8,918.00	12	Yes	Yes
Rock Hill	66,154	3	\$12,542.00	15	\$3,600.00	22	Yes	Yes
Greenville	58,409	4	\$18,207.00	5	\$11,236.00	4	Yes	Yes
Summerville	43,392	5	\$15,000.00	11	\$7,500.00	14	Yes	Yes
Sumter	40,524	6	\$17,485.00	7	\$10,491.00	5	Yes	Yes
Hilton Head Island	37,099	7	\$10,400.00	18	\$7,800.00	13	No	No
Florence	37,056	8	\$18,266.00	4	\$15,810.00	1	Yes	Yes
Spartanburg	37,013	9	\$16,000.00	8	\$9,000.00	11	Yes	Yes
Goose Creek	35,938	10	\$30,000.00	1	\$7,200.00	15	No	Yes
Aiken	29,524	11	\$15,017.60	10	\$9,006.40	10	No	No
Myrtle Beach*	27,109	12	\$20,000.00	3	\$15,000.00	2	Yes	Yes
Anderson	26,686	13	\$15,000.00	11	\$10,000.00	7	Yes	Yes
Greer	25,515	14	\$9,600.00	20	\$6,000.00	17	Yes	Yes
Greenwood	23,222	15	\$9,600.00	20	\$4,800.00	21	Yes	Yes
Mauldin	22,889	16	\$10,000.00	19	\$6,000.00	17	Yes	No
North Augusta	21,348	17	\$12,056.00	16	\$6,028.00	16	Yes	Yes
Easley	19,993	18	\$14,400.00	13	\$6,000.00	17	No	No
Simpsonville	18,238	19	\$9,600.00	20	\$6,000.00	17	Yes	Yes
Hanahan	17,997	20	\$7,200.00	23	\$3,600.00	22	Yes	Yes
Lexington	17,870	21	\$12,000.00	17	\$10,000.00	7	Yes	Yes
Conway	17,103	22	\$16,000.00	8	\$10,000.00	7	Yes	Yes
West Columbia	14,998	23	\$12,673.44	14	\$10,158.72	6	Yes	Yes
Avg of Top 13 Mgr/Adm exc. Hilton Head Island			\$18,251.47		\$10,105.12			

Health Benefits: Approx. \$400/mo

\$4,800.00

\$4,800.00

Dental Benefits: Approx. \$11.72/mo

\$140.64

\$140.64

Retirement Benefit: Approx. 10.45% of Salary

\$1,907.28

\$1,055.99

Total

\$25,099.39

\$16,101.75

***Myrtle Beach - Mayor's salary increases to \$50,000 eff. 1/1/14**

Avg with 1/1/14 Myrtle Beach Mayor Increase

\$20,751.47

Health Benefits: Approx. \$400/mo

\$4,800.00

Dental Benefits: Approx. \$11.72/mo

\$140.64

Retirement Benefit: Approx. 10.45% of Salary

\$2,168.53

Total

\$27,860.64